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Supreme Court, U.S.
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In The

# Supreme Court of the United States

STATE OF LOUISIANA, THROUGH THE HONORABLE MIKE J. FOSTER, JR., GOVERNOR; THE LOUISIANA STATE BOARD OF ETHICS, AND ITS MEMBERS; ROBERT ROLAND, HARRY BLUMENTHAL, JR., ROBERT BAREIKIS, Dr., E.L. GUIDRY, VIRGIL ORR, Dr., REVIUS ORTIQUE, JR., T.O. PERRY, JR., ROBERT L. SAWYER, NATHAN J. THORNTON, JR., EDWIN O. WARE, III, CAROLE COTTON WINN; DAVID W. HOOD, SECRETARY OF THE LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS; AND MARK C. DRENNEN, COMMISSIONER OF ADMINISTRATION,

*Petitioners,*

versus

PHILLIP E. O'NEILL, AVERY C. ALEXANDER, AND ARTHUR A. MORRELL,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit**

## PETITION FOR WRIT OF CERTIORARI


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## QUESTIONS PRESENTED FOR REVIEW

1. Did the United States Court of Appeals for the Fifth Circuit err when it affirmed the finding of the United States District Court for the Eastern District of Louisiana that Louisiana's program for the random drug testing of its elected officials set out in LSA-R.S. 42:1116.1 and Chapter 17 of the Rules for the Louisiana Board of Ethics does not comport with the requirements of the Fourth Amendment to the United States Constitution?

2. Did the United States Court of Appeals for the Fifth Circuit err by failing to find that Louisiana has "special needs, beyond the normal need for law enforcement," allowing for the random drug testing of its elected officials pursuant to LSA-R.S. 42:1116.1 and Chapter 17 of the Rules for the Louisiana Board of Ethics?

3. Did the United States Court of Appeals for the Fifth Circuit err by failing to find that Louisiana's program for the random drug testing of its elected officials set out in LSA-R.S. 42:1116.1 and Chapter 17 of the Rules for the Louisiana Board of Ethics is distinguishable from Georgia's drug testing program which was at issue in *Chandler v. Miller*, 520 U.S. 305 (1997)?

## PARTIES TO THE PROCEEDING

The caption of the case contains the names of all parties to the proceeding.

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## CITATIONS OF OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit was entered in this matter on December 28, 1999, Docket No. 98-31415, ___ F.3d ___.

The decision of the United States District Court for the Eastern District of Louisiana, Docket Nos. 98-2807 and 98-2870, Section L, was entered in November of 1998, 61 F.Supp.2d (E.D. La. 1998).

## JURISDICTION

Judgment was entered by the United States Court of Appeals for the Fifth Circuit in this matter on December 28, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The full text of Louisiana Revised Statutes 42:1116.1, Louisiana's Drug Testing Statute, is contained in Appendix 3.

2. The full text of Chapter 17 of the Rules for the Louisiana Board of Ethics relative to the drug testing of Louisiana's elected officials is contained in Appendix 4.

3. Fourth Amendment to the United States Constitution:

   The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no

Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

4. Fourteenth Amendment to the United States Constitution, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## INTRODUCTION

In 1997, the Louisiana Legislature enacted a program for the random drug testing of Louisiana's elected officials in order to ensure that such officials "are persons of integrity, sound judgment, reliability, and seriousness of purpose . . . " and to promote the physical and mental well being of such officials so they can continue to function effectively in all aspects of their duties.[1] In November of 1998, the United States District Court for the Eastern District of Louisiana found Louisiana's random drug testing program violative of the Fourth Amendment

[1] LSA-R.S. 42:1116.1A, *see* Appendix 3.

to the United States Constitution and issued a permanent injunction preventing its enforcement.[2]

The crux of the District Court's opinion was that no meaningful distinction existed between the present case and this Court's opinion in *Chandler v. Miller*[3] whereby this Court struck down as unconstitutional Georgia's drug testing of candidates. However, there is a vast difference between Louisiana's elected officials and those who merely seek election to public office: **candidates** are private citizens. **Elected officials** are decidedly different from citizen-candidates. Louisiana's elected officials have a significantly diminished expectation of privacy thereby enhancing Louisiana's "special needs" to randomly drug test such officials. Further, the use of judgment impairing illegal drugs by Louisiana's elected officials poses a real and concrete danger as such officials are entrusted with the management of government and with governmental decision making authority.

Accordingly, it is essential to the State's compelling interest in regulating certain untoward activities of its elected officials that this Court review the decision of the United States Court of Appeals for the Fifth Circuit which summarily upheld and adopted the reasons enunciated by the District Court.[4]

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[2] *See* Appendix 2.

[3] 520 U.S. 305 (1997).

[4] *See* Appendix 1.

## STATEMENT OF THE CASE

By virtue of Acts 1997, No. 1303, the Louisiana Legislature enacted a program which provided for the random drug testing of all elected officials throughout the State of Louisiana, except for judges.[5] Through such legislation, the Louisiana Board of Ethics was given the responsibility to develop and administer the drug testing program and to adopt rules and regulations necessary for the implementation of the random drug testing program.[6] Pursuant to this responsibility, the Board adopted and promulgated rules to implement the drug testing program.[7]

Subsequently, two complaints were filed in the United States District Court for the Eastern District of Louisiana which alleged that Louisiana's drug testing program was violative of the United States Constitution and the Constitution of Louisiana. A hearing was held on

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[5] Acts 1997, No. 1303 was enacted as an addition to the Code of Governmental Ethics (LSA-R.S. 42:1101 et seq.) and is found in LSA-R.S. 42:1116.1. (*See* Appendix 3.) Section 1167 of the Code of Governmental Ethics (LSA-R.S. 42:1167) clearly exempts judges from the provisions of the Code of Governmental Ethics and provides as follows:

> All judges, as defined by the Code of Judicial Conduct, shall be governed exclusively by the provisions of the Code of Judicial Conduct, which shall be administered by the Judiciary Commission provided for in Article V, Section 25 of the Louisiana Constitution.

[6] LSA-R.S. 42:1116.1B, *see* Appendix 3.

[7] *See* Appendix 4.

the complaints and the Honorable Eldon E. Fallon, Presiding Judge, found that Louisiana's drug testing program was violative of the Fourth Amendment to the United States Constitution and issued a permanent injunction preventing the enforcement of the program.

Thereafter, the Governor of Louisiana, the Louisiana Board of Ethics and its members, the Secretary of the Louisiana Department of Health and Hospitals, and the Commissioner of Administration for Louisiana timely filed an appeal from the District Court judgment with the United States Court of Appeals for the Fifth Circuit. District Court jurisdiction was appropriate pursuant to 28 U.S.C. § 1331. Appellate jurisdiction was appropriate pursuant to 28 U.S.C. § 1291 and § 1292(a)(1).

## ARGUMENT

### I. Overview of Louisiana's Drug Testing Program

The Louisiana Legislature adopted the random drug testing program for elected officials to further the compelling governmental need of ensuring that elected officials in Louisiana "are persons of integrity, sound judgment, reliability, and seriousness of purpose . . . " and to promote the physical and mental well being of elected officials in Louisiana so such officials continue to function effectively in all aspects of their duties.[8] Pursuant to its statutory responsibility, the Board promulgated rules to implement the program.[9]

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[8] LSA-R.S. 42:1116.1A, *see* Appendix 3.

[9] *See* Appendix 4.

The program requires elected officials, on a random basis, to submit to a drug test to screen for the presence of the following illegal drugs which are not taken pursuant to a lawful prescription: marijuana, opioids, cocaine, amphetamines, and phencyclidine.[10] The Board determines the percentage of elected officials to be tested each fiscal year within established guidelines.[11] Each elected official is assigned a number by the Board's designated representative to ensure that the selection process and the test results are kept confidential.[12] The designated representative then supplies the numbers to the random number selector who selects at random the elected officials to be tested, according to the percentage established by the Board.[13] The random number selector does not, at any time, have access to the names of the elected officials.[14]

Once the elected officials to be tested are selected, notice is delivered by a commercial delivery service to each elected official ordering the elected official to report to a designated collection site within 32 hours from receipt of such notice to submit a urine sample to be

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[10] LSA-R.S. 42:1116.1B(1), *see* Appendix 3.

[11] Rule 1709 of the Rules for the Board of Ethics, *see* Appendix 4, p. 44.

[12] Rule 1705 of the Rules for the Board of Ethics, *see* Appendix 4, p. 43.

[13] Rule 1707 of the Rules for the Board of Ethics, *see* Appendix 4, p. 43.

[14] *Id.*

tested for the presence of illegal drugs.[15] If the elected official does not receive notice, the Board's designated representative issues a subpoena to be personally served on the elected official which orders the elected official to report to a designated collection site within 32 hours of service of the subpoena.[16] Throughout the process, the Board's designated representative has the duty to ensure the confidentiality of all procedures associated with the testing of the elected official.[17] If the elected official cannot report to the collection site within 32 hours, the elected official has the opportunity to establish good cause for such failure to report.[18]

Once the specimen is collected, an approved laboratory will test the specimen for the presence of the enumerated illegal drugs.[19] If the results of the initial test are positive, the results are disclosed only to the elected official and the Board's designated representative.[20] Then, the laboratory must conduct a confirmatory test.[21]

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[15] Rules 1701 and 1710 of the Rules for the Board of Ethics, *see* Appendix 4, pp. 41 and 44.

[16] Rule 1710 of the Rules for the Board of Ethics, *see* Appendix 4, p. 44.

[17] Rule 1703E of the Rules for the Board of Ethics, *see* Appendix 4, p. 42. *See also* LSA-R.S. 42:1116.1D(1) contained in Appendix 3.

[18] Rule 1721 of the Rules for the Board of Ethics, *see* Appendix 4, p. 49.

[19] LSA-R.S. 42:1116.1C, *see* Appendix 3.

[20] LSA-R.S. 42:1116.1D(2), *see* Appendix 3.

[21] LSA-R.S. 42:1116.1B(2) and Rule 1715C of the Rules for the Board of Ethics, *see* Appendix 3 and Appendix 4, p. 47.

If the confirmatory test is also positive, then the information may be privately released to the Board.[22] The tested elected official is not prohibited from disclosing the results of his drug test to any person he chooses.[23]

If the initial and confirmatory tests are positive, then the Board may conduct a private hearing to determine if the elected official violated LSA-R.S. 42:1116.1.[24] If the Board finds that the elected official violated LSA-R.S. 42:1116.1, no penalty may be imposed.[25] However, the Board will issue a subpoena to the elected official ordering his appearance at a collection site to submit to a second drug screening not less than one month and not more than six months after the finding of such violation.[26] Only if the second drug test and confirmatory tests are positive can the Board hold a public hearing and impose civil penalties.[27]

## II. Louisiana's Drug Testing Program is Constitutional

The United States Court of Appeals for the Fifth Circuit affirmed the decision of the United States District Court for the Eastern District of Louisiana which found

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[22] LSA-R.S. 42:1116.1D(2), *see* Appendix 3.

[23] LSA-R.S. 42:1116.1D(4), *see* Appendix 3.

[24] Rule 1727A of the Rules for the Board of Ethics, *see* Appendix 4, p. 52.

[25] LSA-R.S. 42:1116.1E, *see* Appendix 3.

[26] Rule 1717A of the Rules for the Board of Ethics, *see* Appendix 4, p. 48.

[27] LSA-R.S. 42:1116.1E and Rule 1727B of the Rules for the Board of Ethics, *see* Appendix 3 and Appendix 4, p. 52.

Louisiana's drug testing program violative of the Fourth Amendment of the United States Constitution and issued a permanent injunction preventing the enforcement of the program. However, the Appellate Court erred as Louisiana demonstrated "special needs, beyond the normal need for law enforcement," which form the basis for its drug testing program.

The Fourth Amendment of the U.S. Constitution requires the government to respect "the right of the people to be secure in their persons . . . against **unreasonable** searches and seizures." (Emphasis added.) As it is not disputed that Louisiana's drug testing requirement is a search for purposes of the Fourth Amendment, the issue presented in this case is whether the search is "reasonable." Ordinarily, a search is reasonable pursuant to the Fourth Amendment if it is based on individualized suspicion of wrongdoing.[28] However, this Court has consistently held that exceptions to the rule of individualized suspicion are warranted based on "special needs, beyond the normal need for law enforcement."[29] When such special needs are alleged, the courts must examine the competing private and public interests advanced by the parties.[30] In other words, "where the privacy interests implicated by the search are minimal, and where an

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[28] *National Treasury Employees Union v. Von Raab*, 489 U.S. 656, 665 (1989).

[29] *Skinner v. Railway Labor Executives Association*, 489 U.S. 602, 619 (1989).

[30] *National Treasury Employees Union v. Von Raab*, 489 U.S. 656, 665-66 (1989).

important governmental interest furthered by the intrusion would be placed in jeopardy by a requirement of individualized suspicion, a search may be reasonable despite the absence of such suspicion."[31]

The special needs of Louisiana in drug testing its elected officials are reflected in the drug testing statute itself. LSA-R.S. 42:1116.1A provides as follows:

> The legislature declares the interest of the state in ensuring that those who are elected to serve in public office at all levels of government are **persons who have a respect for the laws they are to uphold and are persons of integrity, sound judgment, reliability, and seriousness of purpose**. The legislature finds that the **use of illegal drugs which may impair the physical or mental ability of an elected official to function effectively in all aspects of his duties cannot be tolerated**, and therefore the state has a compelling interest in establishing a requirement that all elected officials demonstrate that they do not use illegal drugs, without the necessity of showing any measure of individualized suspicion. (Emphasis added.)

The citizens of Louisiana have entrusted their elected officials with the fiscal well being of the State. In addition, Louisiana's elected officials are charged with enacting and enforcing Louisiana's anti-drug laws and policies. In fact, Louisiana's elected officials are required to take an oath of office in which they swear to "support the constitution and laws of the United States and the

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[31] *Skinner v. Railway Labor Executives Association*, 489 U.S. 602, 624 (1989).

constitution and laws of" Louisiana and to "faithfully and impartially discharge and perform all the duties incumbent" upon them as elected officials.[32] There is a real and concrete danger that the use of illegal drugs by elected officials in Louisiana will impair the judgment and integrity of those elected officials, will jeopardize the discharge of public functions, including the enactment and enforcement of state anti-drug laws and policies, and will undermine the public confidence and trust in Louisiana's elected officials.

While there has been no showing of a history of drug abuse by Louisiana's elected officials, such a showing is not a necessary element to prove that a "special need" is present in this case. In fact, such a showing "is not mandatory and such a requirement would present 'an unduly narrow view of the context in which' " Louisiana's drug testing program was implemented.[33] " 'Drug abuse is one of the most serious problems confronting our society today' " and "neither our workplaces nor our elementary schools are immune from the drug scourge causing such problems in our land."[34]

Louisiana is no exception. In Louisiana's war on drugs, its elected officials are one of its first lines of defense to prevent the influx of drugs into Louisiana and to prevent the use of drugs by its citizens. In fact,

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[32] Louisiana Constitution Article X, Section 30, *see* Appendix 5, p. 54.

[33] *Aubrey v. Lafayette Parish*, 148 F.3d 559, 563 (5th Cir. 1998) citing *National Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989).

[34] *Id.*

"[e]lected state officials control not merely what will happen to a particular package of drugs, but the flow of all narcotics into the state."[35] Further, "[s]tate politicians' positions of power can also make them vulnerable. The bribery and blackmail targeted at a Customs Service agent pales in comparison to that directed at policy making officials."[36] Louisiana's elected officials enact and enforce Louisiana's anti-drug laws and must be beyond reproach when it comes to such activities.

In a recent opinion rendered by the United States Court of Appeals for the Seventh Circuit, *Todd v. Rush County Schools*,[37] the Seventh Circuit upheld as constitutional a drug testing program instituted by the Rush County School Board which required any high school student wishing to participate in extracurricular activities to consent to a random urine test for drugs, alcohol, and tobacco. The Court found that the program at issue furthered a special need of the government beyond that of law enforcement since the program "was designed to deter drug use and not to catch and punish users."[38] Additionally, the Court stated that "successful extracurricular activities require healthy students."[39] Finally, the

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[35] George M. Dery, III, *Are Politicians more Deserving of Privacy than Schoolchildren? How Chandler v. Miller Exposed the Absurdities of Fourth Amendment "Special Needs" Balancing*, 40 Ariz. L. R. 73, 93 (1998).

[36] *Id.* at 93-94.

[37] 133 F.3d 984 (7th Cir. 1998).

[38] *Id.* at 986.

[39] *Id.*

Court went on to find that the drug testing scheme was reasonable stating that:

> [E]xtracurricular activities, like athletics, "are a privilege at the High School." . . . [T]he drug testing program applies only to students who have voluntarily chosen to participate in an activity. . . . [S]tudents in other extracurricular activities, like athletes, "can take a leadership role in the school community and serve as an example to others . . . . Participation in interscholastic athletics is a benefit carrying with it enhanced prestige and status in the student community" and thus "it is not unreasonable to couple these benefits with an obligation to undergo drug testing."[40] (Citations omitted.)

The governmental interests, or "special needs", presented by the Louisiana drug testing program are similar to those presented in the *Todd* case. First, the Louisiana program serves an interest beyond law enforcement as the law is designed to deter drug use rather than to punish users. Pursuant to LSA-R.S. 42:1116.1D(1), "[a]ll information, interviews, reports, statements, memoranda, or test results received by the board through its drug testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in a proceeding, hearing or civil litigation for a violation of this Section." The results of a positive initial test can be disclosed only to the elected official and to the Board's designated representative.[41] The information may

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[40] *Id.*

[41] LSA-R.S. 42:1116.1D(2), *see* Appendix 3.

be disclosed to the Board only if the confirmatory test is also positive.[42] Further, a public enforcement proceeding to impose civil penalties cannot be conducted unless the elected official has tested positive for illegal drugs on two separate occasions.[43] Consequently, if an elected official tests positive for illegal drugs, that information is kept confidential. In fact, the Board will not find out that the elected official tested positive unless the confirmatory test is also positive for illicit drugs. Even if the initial and confirmatory tests are both positive, that information is not released to anyone other than the elected official tested, the Board, and the Board's designated representative. However, the tested elected official is not prohibited from disclosing the results of his drug test to any person he chooses.[44] Even if an elected official tests positive on the initial and confirmatory tests, the elected official is not subject to civil penalties. Therefore, the elected official has the opportunity to discontinue any illegal drug use, seek professional help, and/or resign his elected position before any further actions are taken. It is only after testing positive for a second time that the elected official may be subject to a public hearing and the imposition of civil penalties by the Board. Accordingly, it is clear that Louisiana's drug testing program serves interests beyond that of law enforcement in that the program is designed to deter drug use among Louisiana's elected officials and is **not** designed to punish elected officials for using illegal drugs.

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[42] LSA-R.S. 42:1116.1D(2), *see* Appendix 3.

[43] LSA-R.S. 42:1116.1E, *see* Appendix 3.

[44] LSA-R.S. 42:1116.1D(4), *see* Appendix 3.

Second, Louisiana has a compelling interest in ensuring that its elected officials are healthy. Louisiana's elected officials are charged with maintaining the State's fiscal well being as well as being charged with safeguarding the health and welfare of the citizens of Louisiana. Additionally, Louisiana's elected officials must establish and enforce Louisiana's anti-drug laws. Discharging these responsibilities requires sound judgment and integrity. Without elected officials of sound mental and physical health, the welfare of the State of Louisiana and its citizens is put in serious jeopardy.

Third, holding an elective office is a privilege in which the particular individuals elected have voluntarily chosen to participate. While participation in the democratic process, such as **seeking** elective office, is a right vested in every citizen of the United States, an elected official does not have the right to retain such an elective office.[45] The retention of an elective office is a privilege which may be maintained only if the official continues to exhibit the qualities of good moral character, sound judgment, integrity, and fitness for office. An elected official in Louisiana may be impeached for committing or being convicted of a felony or for malfeasance or gross misconduct while in public office.[46] Further, pursuant to the

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[45] *See* Case Comment, *Fourth Amendment – Mandatory Drug Testing – Eleventh Circuit Upholds Suspicionless Drug Testing for Political Candidates. – Chandler v. Miller*, 73 F.3d 1543 (11th Cir. 1996), *cert. granted*, 65 U.S.L.W. 3086 (U.S. Oct. 1, 1996) (No. 96-126), 110 Harv. L. Rev. 547, 551-552 (1997).

[46] Louisiana Constitution Article X, Section 24, *see* Appendix 5, p. 54.

authority contained in Article X, Section 26 of the Louisiana Constitution, the Louisiana Legislature enacted laws providing for the recall of elected officials by the Louisiana electorate.[47]

Finally, elected officials should take a leadership role in the community and often serve as an example to the community. There is no greater role of leadership than that of holding elective office. One of the leadership roles exercised by elected officials, at both the state and local level, has been the imposition of drug testing programs. City Council members in a number of municipalities have required drug testing of city employees. School boards have required drug testing of school system officials and students. Statewide office holders have required employees in their departments to participate in drug testing programs. And, the legislature has imposed various drug testing programs, including the one which has been challenged in this case.

As Louisiana has "special needs" beyond law enforcement to conduct random drug testing of its elected officials, the privacy interests of Louisiana's elected officials must be weighed against Louisiana's interest in suspicionless drug testing. Louisiana's elected officials have a diminished expectation of privacy by reason of their voluntary participation in an activity which is pervasively regulated and carries with it enhanced prestige. In addition, it is not feasible for Louisiana to conduct drug testing based on individualized suspicion as the State cannot monitor the day-to-day

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[47] LSA-R.S. 18:1300.1 et seq., *see* Appendix 5, pp. 55-68.

activities required to elicit such suspicion. Accordingly, Louisiana's interests in conducting suspicionless drug testing of its elected officials are compelling and outweigh the diminished expectations of privacy held by such elected officials.

This Court recognized in *Skinner v. Railway Labor Executives Association*[48] that an individual's expectation of privacy is diminished by reason of his participation in an activity that is pervasively regulated. As Louisiana's elected officials have voluntarily chosen to participate in an activity which is pervasively regulated, they have a diminished expectation of privacy.

Louisiana's elected officials give up many rights held by other individuals in the private sector. While campaigning, candidates are required to disclose any contributions received or expenditures made pursuant to Louisiana's Campaign Finance Disclosure Act.[49] The reports filed are subject to audit and failure to report or failure to accurately report can subject the candidate to civil penalties.[50]

Elected officials, unlike candidates, also submit to additional forms of scrutiny with respect to their financial condition. LSA-R.S. 42:282 requires public officers to account not only for monies received by them on behalf of the State but also for fees received for services rendered.[51] Failure to comply with this provision can subject

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[48] 489 U.S. 602, 627 (1989).

[49] LSA-R.S. 18:1481 et seq., *see* Appendix 5, pp. 69-176.

[50] LSA-R.S. 18:1505.1 et seq., *see* Appendix 5, pp. 133-159.

[51] *See* Appendix 5, p. 227.

the official to fines or imprisonment. In addition, the papers, books, accounts, records, files, etc. of the offices and programs of each elected official are subject to audit by the legislative auditor.[52] Moreover, LSA-R.S. 42:1114 requires financial disclosure of certain types of private income.[53]

Further, upon becoming an elected official, the conflicts of interest provisions contained in the Code of Governmental Ethics are applicable.[54] An elected official is prohibited from working for or receiving gifts from any person who has a contractual, business, or financial relationship with his public agency.[55] In addition, an elected official and any legal entity in which he owns over twenty-five percent cannot enter into contracts, subcontracts or any other transactions with his public agency.[56] There are also restrictions with respect to post-employment activities of elected officials.[57] Therefore, by becoming an elected official, an individual voluntarily subjects himself to restrictions with respect to whom he may or may not do business with or receive gifts from while in public office and further restricts himself with respect to activities upon termination of his public service.

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[52] *See* LSA-R.S. 24:511 et seq., *see* Appendix 5, pp. 177-216.

[53] *See* Appendix 5, pp. 245-249.

[54] *See* LSA-R.S. 42:1101 et seq., *see* Appendix 5, pp. 228-315.

[55] LSA-R.S. 42:1111C(2) and 1115A, *see* Appendix 5, pp. 238-240 and 249.

[56] LSA-R.S. 42:1113A, *see* Appendix 5, p. 243.

[57] LSA-R.S. 42:1121A, *see* Appendix 5, p. 260.

Another restriction applicable to elected officials is the prohibition against dual officeholding.[58] This restriction prohibits elected officials from holding certain other public offices and public jobs simultaneously. Accordingly, upon taking office, an elected official voluntarily limits his opportunities to seek other public offices or jobs.

Additionally, when a public entity purchases or sells land to a private entity, the names and ownership interests of any elected officials connected with such private entity must be disclosed and published in the official records of the public entity.[59]

Moreover, elected officials relinquish their right to receive damages when criticized publicly, regardless of whether such criticism is based on the truth, as the standard for defamation of public officials is stricter than for average citizens. An elected official has the burden of proving "actual malice" to recover in an action for defamation.[60] Therefore, "defamation actions allow far greater latitude in the criticism of elected officials and politicians than private individuals."[61]

All of the foregoing limitations on elected officials' privacy are designed to protect the public, to ensure that the judgment and integrity of Louisiana's elected officials

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[58] *See* LSA-R.S. 42:61 et seq., *see* Appendix 5, pp. 219-227.

[59] LSA-R.S. 38:2213, *see* Appendix 5, pp. 217-218.

[60] *Trentecosta v. Beck*, 703 So.2d 552, 560 (La. 1997), citing *Curtis Publishing Company v. Butts*, 388 U.S. 130 (1967).

[61] *State v. Moses*, 665 So.2d 779, 785 (La.App. 4th Cir. 1995) citing U.S. Supreme Court jurisprudence.

are not compromised and to instill public confidence in Louisiana's elected officials. These are the same interests sought to be protected by Louisiana's drug testing program. In fact, elected officials relinquish important rights not surrendered by private citizens. Accordingly, the privacy interests of elected officials are diminished by their voluntary participation in an activity which is already subject to extensive regulation and in which other rights of such officials are given up for the greater good of the public. As stated by this Court in *National Treasury Employees Union v. Von Raab*,[62] "it is plain that certain forms of public employment may diminish privacy expectations even with respect to personal searches." Serving as an elected official is a form of public employment which carries with it a diminished expectation of privacy.

While elected officials are subject to public scrutiny, it is not feasible for Louisiana to conduct drug testing based on individualized suspicion as the State cannot monitor the day-to-day activities required to elicit such suspicion. Simply because elected officials are in the public eye, does not mean that the public, or more importantly the State of Louisiana itself, could detect potential drug use by those officials. Even elected officials lead private lives that are not subject to scrutiny by the public or the State. Suspicionless drug testing of elected officials is an important mechanism available to the State to ensure that its elected officials are of sound mind, body, judgment and integrity, free from the effects of illegal drugs, and to ensure that such officials will protect the State's fiscal well being, guard the health and safety of its

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[62] 489 U.S. 656, 672 (1989).

citizens, and enact and enforce drug laws and policies which will support the fight against illegal drug use. Accordingly, Louisiana's interests in conducting suspicionless drug testing of its elected officials are compelling and outweigh the diminished expectations of privacy held by such elected officials.

## III. Louisiana's Drug Testing Program is Distinguishable from Georgia's Drug Testing Program which was at Issue in *Chandler v. Miller*.

The Appellate Court upheld the District Court's finding that the issues presented in this case are no different from the issues resolved by this Court in *Chandler v. Miller*[63] and therefore, struck down Louisiana's drug testing of elected officials as violative of the Fourth Amendment to the United States Constitution. However, the Appellate Court erred as there are vital distinctions between Louisiana's drug testing of its **elected officials**, at issue in the present case, and Georgia's drug testing of **candidates**, which was at issue in *Chandler*. Those distinctions make clear that Louisiana's drug testing scheme is **not** violative of the Fourth Amendment of the Constitution.

As the Appellate Court summarily adopted the District Court decision which relied on *Chandler* to invalidate Louisiana's new law, each of these distinctions will be discussed separately below:

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[63] 520 U.S. 305 (1997).

### A. State governments have a demonstrable "special need" in curtailing illegal drug use by their *elected officials*, as opposed to *candidates* for election to public office.

*Chandler* is patently distinguishable as this Court there dealt with drug testing of **candidates** and the present case involves drug testing of **elected officials**. The District Court below found "no meaningful distinction between candidates for public office and those who have ascended to such office following an election." However, this distinction is of paramount importance and underscores why this Court's concerns in *Chandler* are clearly assuaged by the manner in which the Louisiana statute is constructed.

In *Chandler* this Court stated that the concerns expressed by Georgia, that is the "special needs" which prompted the State to implement drug testing of candidates, lacked any "concrete danger demanding departure from the Fourth Amendment's main rule."[64] While no concrete danger is posed by potential candidates to public office (most of whom will never actually serve in public office), the same cannot be said with respect to individuals holding elective office. As discussed previously, there is a real and concrete danger that the use of illegal drugs by elected officials in Louisiana **will** impair the judgment and integrity of those elected officials, **will** jeopardize the discharge of public functions, including the enactment and enforcement of state anti-drug laws and policies, and **will** undermine the public confidence

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[64] *Id.*

and trust in Louisiana's elected officials. An individual must actually hold public office before any of the dangers posed in *Chandler* become real and concrete. Louisiana's drug testing program involves elected officials who are actually holding public office. Louisiana's elected officials enact and enforce Louisiana's anti-drug laws while candidates for office do **not** enact or enforce any laws. In fact, Louisiana's elected officials are required to take an oath of office in which they swear to "support the constitution and laws of the United States and the constitution and laws of" Louisiana and that they "will faithfully and impartially discharge and perform all the duties incumbent" upon them as elected officials.[65] Candidates take no such oath nor do they have the corresponding responsibility to the State and its citizens. Louisiana's law is not designed merely to set a good example for the rest of the citizenry but to ensure that governmental decisions are made by officials with sound judgment and integrity. Consequently, the dangers present in the case at hand are real and **not** symbolic and Louisiana has a compelling interest in ensuring that such dangers are eliminated.

**B. *Elected officials*, as opposed to candidates, have a significantly diminished expectation of privacy.**

Elected officials have a diminished expectation of privacy that is not shared by candidates. As discussed previously, there are a host of laws which combine to reduce the expectation of privacy held by an elected

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[65] Louisiana Constitution Article X, Section 30, *see* Appendix 5, p. 55.

official. Elected officials voluntarily subject themselves to restrictions regarding: (1) with whom they can be privately and publicly employed, both while in office and upon terminating their public service; (2) with whom they can do business; and (3) with whom they can sell or purchase property or other goods. They also voluntarily submit to public disclosure with respect to their salaries, their handling of government funds, and certain private transactions and relinquish their right to sue for defamation when they are publicly criticized for their actions. Candidates, on the other hand, are not subject to these governmental controls and do not lose their status as private citizens. Accordingly, while candidates remain private individuals, elected officials become part of the government and are subject to extensive governmental regulations. Elected officials forgo their private status in order to serve the public and enjoy enhanced prestige and respect in the community by virtue of their public service.

### C. While candidacy may be a "right" of every citizen, retention of elective office is a privilege.

*Chandler* is also distinguishable because participation in the democratic process, such as **seeking** elective office, i.e. being a candidate for office, is a **right** vested in every citizen of the United States, while maintaining elective office is a **privilege**.[66] An elected official does not have

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[66] *See* Case Comment, *Fourth Amendment – Mandatory Drug Testing – Eleventh Circuit Upholds Suspicionless Drug Testing for Political Candidates. – Chandler v. Miller*, 73 F.3d 1543 (11th Cir. 1996), *cert. granted*, 65 U.S.L.W. 3086 (U.S. Oct. 1, 1996) (No. 96-126), 110 Harv. L. Rev. 547, 551-552 (1997).

the right to retain his position. The retention of an elective office is a privilege which may be maintained only if the official continues to exhibit the qualities of good moral character, sound judgment, integrity, and fitness for office. An elected official in Louisiana may be impeached for committing or being convicted of a felony or for malfeasance or gross misconduct while in public office.[67] Further, pursuant to the authority contained in Article X, Section 26 of the Louisiana Constitution, the Louisiana Legislature enacted laws providing for the recall of elected officials by the Louisiana electorate.[68] Therefore, Louisiana's drug testing of elected officials has a direct nexus to the important and legitimate governmental interests to be served by its drug testing program.

### D. Unlike the Georgia statute, Louisiana's law provides an effective barrier to illegal drug use by elected officials.

Finally, it is noteworthy that the Louisiana drug testing program, unlike the Georgia program at issue in *Chandler*, is well designed to identify elected officials who abuse drugs. The Georgia statute required a candidate to submit to a drug test at any time within 30 days prior to qualifying for nomination or election. Therefore, the candidate had discretion as to when he would take the test and could abstain from drug use in order to avoid detection. The Louisiana program, on the other hand, provides an effective means of identifying elected officials who use

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[67] Louisiana Constitution Article X, Section 24, *see* Appendix 5, p. 54.

[68] LSA-R.S. 18:1300.1 et seq., *see* Appendix 5, pp. 55-68.

illegal drugs. Upon receipt of notice, an elected official is required to report to a designated collection site within 32 hours to provide a urine sample. Consequently, under the Louisiana program, an elected official would not have the opportunity to abstain from use of illegal drugs for a "pretest period sufficient to avoid detection."[69]

## CONCLUSION

Louisiana's elected officials are significantly different from those who merely seek election to public office; unlike candidates, elected officials have a demonstrably diminished expectation of privacy, given their voluntary participation in a privileged activity which is pervasively regulated by the state and carries with it enhanced community prestige.

This diminished expectation of privacy highlights and indeed underscores Louisiana's compelling governmental interests and thus "special needs" in thwarting the elicit use of judgment impairing illegal drugs by its elected officials.

*Chandler* is manifestly distinguishable from the present case. This Court in *Chandler*, dealing with the rights of candidates, correctly concluded that private citizens who seek election to public office should not be subjected to suspicionless searches absent demonstrable "special needs." Louisiana's challenged statute is inapplicable to candidates and is only applicable to those who have

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[69] *Chandler v. Miller*, 520 U.S. 305 (1997).

successfully sought election to public office and have thus been entrusted with the management of government and with governmental decision making authority. The use of judgment impairing illegal drugs by Louisiana's elected officials poses a real and concrete danger demanding departure from the Fourth Amendment's general rule; and, unlike the Georgia statute, the Louisiana statute was carefully crafted to ensure that the random drug testing would create a real and substantial barrier to the continued use of illegal drugs and would provide a demonstrable impediment and deterrent to such untoward actions.

In the final analysis, and in a broader sense, is it truly "unreasonable" to expect those who have successfully sought out the privilege of governmental authority, to validate, by random testing, that their judgment and conduct is not impaired by the use of illegal drugs? Surely, elected officials have no greater expectation of privacy than students attending public schools who participate in extracurricular activities or certain categories of border guards and railway workers. Balancing these diminished expectations of privacy against the minimal inconvenience to which Louisiana elected officials are subjected by reason of the challenged statute demonstrates the reasonableness of Louisiana's mandated suspicionless searches.

It is respectfully submitted that this Court should review the opinion of the Court of Appeals for the Fifth Circuit which affirmed the District Court's finding that

Louisiana's drug testing program violates the Fourth Amendment of the United States Constitution.

Respectfully submitted,

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**APPENDIX 1**

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 98-31415

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PHILLIP E. O'NEILL, ETC, ET AL,

Plaintiffs,

AVERY C. ALEXANDER, in his official capacity of Louisiana State Representative for Representative District No. 93, State of Louisiana,

Plaintiff-Appellee,

versus

STATE OF LOUISIANA, ET AL,

Defendants,

MIKE J. FOSTER, JR., Honorable, in his official capacity as the governor of Louisiana and individually; LOUISIANA STATE BOARD OF ETHICS, and its members thereof; ROBERT ROLAND, Honorable, in his official capacity as the Chairman thereof; HARRY BLUMENTHAL, JR., Honorable, in his official capacity as the Vice-Chairman thereof; ROBERT BAREIKIS, Dr., in his official capacity as a board member thereof and individually; E. L. GUIDRY, in his official capacity as a board

member thereof and individually; VIRGIL ORR, Dr., in his official capacity as a board member thereof and individually; REVIUS ORTIQUE, JR., in his official capacity as a board member thereof and individually; T. O. PERRY, JR., in his official capacity as a board member thereof and individually; ROBERT L. SAWYER, in his official capacity as a board member thereof and individually; NATHAN J. THORNTON, in his official capacity as a board member thereof and individually; EDWIN O. WARE, III, in his official capacity as a board member thereof and individually; CAROLE COTTON WINN, in her official capacity as a board member thereof and individually; DAVID W. HOOD, Honorable, in his official capacity as Secretary of Louisiana Department of Health and Hospitals and individually; MARK C. DRENNEN, Honorable, in his official capacity as Commissioner of Administration and individually,

Defendants-Appellants.

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ARTHUR A. MORRELL,

Plaintiff-Appellee,

versus

MIKE J. FOSTER, JR., Governor,

Defendant-Appellant.

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Appeal from the United States District Court
for the Eastern District of Louisiana

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December 28, 1999

Before WIENER and STEWART, Circuit Judges, and SHAW, District Judge.[1]

PER CURIAM:

This is an appeal from the decision of the district court holding that Louisiana Revised Statute 42:1116.1, which provides for random drug testing of elected officials holding state office in Louisiana, is violative of the Fourth Amendment of the United States Constitution. We have reviewed the record on appeal and the appellate briefs of counsel, and have heard arguments of able counsel discussing the relevant facts from the record and the applicable law as related in briefs and those arguments. In the end we are satisfied that the district court committed no reversible error in applying the pertinent law to the virtually uncontested facts and that all rulings of the district court should be affirmed for essentially the reasons set forth in the complete and well-crafted opinion of that court.[2]

AFFIRMED.

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[1] District Judge of the Western District of Louisiana, sitting by designation.

[2] *See O'Neill, et al v State of Louisiana, et al*, 61 F.Supp. 2d 485 (E.D.La. 1998).

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## APPENDIX 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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| PHILLIP E. O'NEILL, ET AL | CIVIL ACTION |
| VERSUS | NO. 98-2807 & 98-2870 |
| STATE OF LOUISIANA, ET AL | REF: ALL CASES |
| | SECTION: L |

JUDGMENT

(Filed Nov. 30, 1998)

Considering the Court's Order and Reasons, entered herein on November 25, 1998, accordingly:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of plaintiffs, Avery C. Alexander, in his official capacity of Louisiana State Representative for Representative District No. 93, State of Louisiana, and Arthur A. Morrell, and against defendants, Honorable M.J. "Mike" Foster, in his official capacity as the Governor of Louisiana and individually, the Louisiana State Board of Ethics, and its members thereof: Honorable Robert Roland, in his official capacity as the chairman thereof, Honorable Harry Blumenthal, Jr., in his official capacity as the Vice-Chairman thereof, Dr. Robert Bareikis, in his official capacity as a board member thereof, E. L. Guidry, in his official capacity as a board member thereof, Dr. Virgil Orr, in his official capacity as a board member thereof, Revius Ortique, Jr., in his official capacity as a board member thereof, T. O. Perry, Jr., in his official capacity as a board member thereof, Robert L.

Sawyer, in his official capacity as a board member thereof, Nathan J. Thornton, Jr., in his official capacity as a board member thereof, Edwin O. Ware, III, in his official capacity as a board member thereof, Carole Cottin Winn, in her official capacity as a board member thereof, Honorable David W. Hood, in his official capacity as Secretary of the Louisiana Department of Health and Hospitals and individually, Honorable Mark C. Drennen, in his official capacity as Commissioner of Administration and individually, permanently enjoining said defendants from implementing or enforcing Title 42, Section 1116.1 of the Louisiana Revised Statutes.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the complaint of Phillip E. O'Neill, as the duly elected Justice of the Peace for the Second Justice of Peace District, Parish of Jefferson, State of Louisiana, is hereby dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendant, the State of Louisiana, and against plaintiff, Avery C. Alexander, in his official capacity of Louisiana State Representative for Representative District No. 93, State of Louisiana, dismissing said plaintiff's complaint with prejudice.

Each party is to bear its own costs.

New Orleans, Louisiana, this 30th day of November, 1998.

/s/ Eldon E. Fallon
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

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| PHILLIP E. O'NEILL, ET AL. | * | CIVIL ACTION |
| | * | NO. 98-2807 |
| VERSUS | * | (REF: ALL CASES) |
| STATE OF LOUISIANA, ET AL. | * | SECTION "L" (5) |
| | * | |

**ORDER AND REASONS**

Before the Court are three motions: 1) motion of plaintiffs Phillip E. O'Neill ("O'Neill") and Avery C. Alexander ("Alexander") for preliminary injunction; 2) motion of plaintiff Arthur A. Morrell ("Morrell") for preliminary injunction; and 3) motion of defendants State of Louisiana and governor M. J. "Mike" Foster to dismiss plaintiffs' complaints for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Both plaintiffs' motions request that the Court enjoin implementation of the State of Louisiana's mandatory drug testing of elected officials pursuant to title 42, section 1116.1 of the Louisiana Revised Statutes. The parties have stipulated to an advancement of trial on the merits to be consolidated with the hearing of the preliminary injunction motions.

For the following reasons, the motion of the defendants to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is hereby GRANTED IN PART and DENIED IN PART, and both plaintiffs' motions for a

preliminary injunction are hereby GRANTED, and implementation of section 1116.1 is hereby PERMANENTLY ENJOINED.

## BACKGROUND

Acts 1997, No. 1303, § 1 of the Louisiana Legislature enacted title 42, section 1116.1 of the Louisiana Revised Statutes during the 1997 legislative session. Sections 2 and 3 of Acts 1997, No. 1303 provided that the State Board of Ethics ("the Board") would implement random drug testing of elected officials on January 1, 1998 or whenever funds were allocated for the design and implementation of such a program. Those funds have been allocated and a proposed screening plan is now in place, making this controversy ripe for review.

Section 1116.1 declares that "the state has a compelling interest in establishing a requirement that all elected officials demonstrate that they do not use illegal drugs, without the necessity of showing any measure of individualized suspicion." La. Rev. Stat. Ann. § 42:1116.1(A) (West Supp. 1998). The statute calls for the development and implementation of a scheme for conducting random drug testing of elected officials. *See id.* at § 1116.1(B). The program requires selected officials to submit to drug screening at a laboratory approved by the Board. *See id.* at § 1116.1(C). The Board treats test results as confidential communications available strictly for use "in a proceeding, hearing, or civil litigation for a violation of this Section." § 1116.1(D)(1).

Initial positive test results are released only to the elected official and an individual designated by the Board

to receive such information, but the Board itself may obtain results should a second, confirmatory test also suggest the presence of illegal drugs. *See id.* at § 1116.1(D)(2). Finally, the statute forbids any elected official from either testing positive for drugs or refusing to submit to a drug screen when requested to do so. Violation of this provision results in imposition of penalties under title 42, section 1153(A) of the Louisiana Revised Statutes, but only if the official tests positive for drugs on two separate occasions or refuses to submit to screening. The regime counts a positive initial test and a confirmatory test as one occasion. *See* La. Rev. Stat. Ann. § 42:1116.1(E) (West Supp. 1998). Penalties for violations include censure of the official or a fine of not more than ten thousand dollars, or both. *See* La. Rev. Stat. Ann. § 42:1153(A) (West Supp. 1998).

Plaintiff O'Neill is the elected Justice of the Peace for the Second Justice of the Peace District, Jefferson Parish, Louisiana. On September 23, 1998 O'Neill filed his complaint for declaratory and injunctive relief, challenging the constitutionality of section 1116.1. His complaint requests class action certification, an injunction against implementation of drug testing, a declaration that the statute violates the First, Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States as well as 42 U.S.C. § 1983, a declaration that the statute violates the Constitution of the State of Louisiana, and costs and attorneys' fees pursuant to 42 U.S.C. § 1988. O'Neill named as defendants the State of Louisiana, Governor M. J. "Mike" Foster, the Louisiana State Board of Ethics, and each individual member of the Board. On September 25, 1998 O'Neill amended his complaint to

add Avery C. Alexander as a plaintiff. Alexander is the elected State Representative for Representative District 93, Orleans Parish, Louisiana.

The other plaintiff in this case is Arthur A. Morrell. He, like Alexander, is an elected representative to the state legislature from Orleans Parish, Louisiana. Morrell filed suit on October 1, 1998, naming Governor Foster as the sole defendant. Morrell's complaint asks this Court to declare that section 1116.1 violates the First, Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States as well as the Constitution of the State of Louisiana, to enjoin enforcement of the statute, and to award costs and attorneys' fees pursuant to 42 U.S.C. § 1988.

On October 8, 1998 O'Neill and Alexander filed their application for preliminary injunctive relief and for advancement of trial on the merits pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure. They argue that the recent decision of the United States Supreme Court in *Chandler v. Miller*, 117 S. Ct. 1295 (1997), which declared unconstitutional a Georgia statute requiring candidates for elective office to submit to drug testing as a precondition to running for office, controls the outcome of this case. According to the plaintiffs, the only difference between Louisiana's statute and the one at issue in *Chandler* is that section 1116.1 mandates testing of officials who are already in elected office, while the Georgia statute made testing a precondition of running for elected office. The plaintiffs maintain that this distinction is meaningless for purposes of constitutional analysis. Morrell's request for a preliminary injunction, filed October 13, 1998, advances essentially the same arguments.

In the Board's opposition, the defendants assert that section 1116.1 is constitutional since the drug testing scheme it embodies is distinguishable from the program in *Chandler.* The Board acknowledges that the random urinalysis does constitute a Fourth Amendment search, so that the issue for the Court is the reasonableness of the proposed search. The Board asserts that a finding of reasonableness normally requires a showing of some individualized suspicion unless the government can demonstrate special needs beyond those of normal law enforcement. If such special needs exist, a court must balance public and private interests to determine whether the search is permissible. The Board argues that the language of the statute itself establishes the special needs for drug testing, since citizens entrust their fiscal interests to elected officials, and since these officials are charged with enacting and enforcing drug laws.

According to the Board, the balancing of interests tips in favor of drug testing. To support this assertion, the Board contends that the testing program aims to deter drug use rather than punish it, that the state has a compelling interest in the health of its elected officials, that holding elected office is a privilege as opposed to the right to run for elected office, that elected officials cede many of the rights of private citizenship and therefore possess a diminished expectation of privacy, and that testing based on individualized suspicion is not feasible in this situation.

The Board then seeks to distinguish the Georgia program struck down in *Chandler,* relying primarily on the distinction between an elected official and a candidate for elective office. The Board argues that drug use by an

elected official presents a concrete danger to the public, while such use by a candidate is one step removed from such risks since the individual is not yet in office. Elected officials also take an oath to uphold and enforce the laws, while candidates have taken no such oath. Elected officials possess a lesser privacy expectation than candidates, since they are subject to more rigorous disclosure requirements concerning their private affairs. Moreover, there exists a right to run for office, but no corresponding right to retain that office once elected. Remaining in office is a privilege, not a right. Finally, the Board attests that the Louisiana scheme is more effective at deterring and discovering drug use than the Georgia program. The Board insists that the situation here is distinguishable from *Chandler*, so that section 1116.1 passes constitutional muster.

The State's motion and brief stress arguments similar to those advanced by the Board. In pressing to uphold the statute, the State contends that special needs exist that justify the use of random drug testing. The balancing of public and private interests weighs in favor of section 1116.1 since, like the student athletes in *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995), in which the Supreme Court upheld suspicionless drug testing, the elected officials here seek out the employment relationship with the State, thereby subjecting themselves to heavy regulation and a diminished expectation of privacy. Like the Board, the State emphasizes that the difference between candidates and elected officials, the increased use of drug testing in private industry, and the effectiveness of the proposed testing scheme all militate towards a finding that the public interests outweigh the

private ones, making section 1116.1 reasonable under the Fourth Amendment. The State also makes some policy arguments for upholding the statute, suggesting that the very novelty of the Georgia law in *Chandler* caused the Supreme Court not to treat it and the state's interests with the serious consideration they deserved. Moreover, if legislators pass laws requiring the testing of other public employees, why should elected officials themselves be exempt from such testing? In short, the State insists that section 1116.1 is much more than a symbolic gesture aimed at discouraging drug use.

The State's motion to dismiss also argues that: 1) this Court lacks jurisdiction over the State of Louisiana since the Eleventh Amendment bars suits against unconsenting states in federal court; 2) the plaintiff O'Neill lacks standing to bring this suit, since he is a judicial official and is therefore exempt from the testing requirements of section 1116.1; and 3) the Court lacks jurisdiction as to the plaintiffs' request for a declaration that section 1116.1 violates the Constitution of the State of Louisiana.

Plaintiff Morrell responds to the defendants by insisting that the Supreme Court rejected nearly identical arguments in *Chandler*. He contends that the attempted distinction between candidates and elected officials is meaningless and was implicitly rejected by the *Chandler* Court, so that the privacy expectations of elected officials are not so diminished as to permit suspicionless drug testing. Morrell attests that the effort to distinguish elected officials from candidates is irrelevant since the defendants have failed to demonstrate any special needs for drug testing in the first place. He points out that, in

other drug testing decisions, the Supreme Court recognized a diminished expectation of privacy in cases where a particular industry was heavily regulated *to ensure safety*. In other words, heavy regulation alone is not sufficient to establish a reduced level of privacy sufficient to sustain random drug testing. In the present case, Morrell contends that the *Chandler* Court specifically held that elected officials do not perform the sort of safety sensitive tasks that would support a special need for section 1116.1.

The response of O'Neill and Alexander concentrates primarily on the State's position that O'Neill lacks standing. O'Neill concedes that the statute does not apply to him in his capacity as a member of the Louisiana judiciary. O'Neill retains standing, he argues, because of his express intention to seek other elective offices in the future, thereby subjecting him to the testing regime of section 1116.1. Since the existence of the program chills his right to run for these offices, O'Neill insists that he has standing to maintain his suit.

On November 20, 1998 the parties agreed to a series of joint stipulations. The plaintiffs consented to withdrawing their request for class certification and to dismissing as defendants the members of the Board in their individual, but not official, capacities. In return, the defendants agreed that if this Court grants the injunction, they would view such an order as binding against all defendants and would refrain from testing any elected officials. All sides agreed to an advancement of trial on the merits pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure, so that they will regard the motions as

ones for permanent rather than preliminary injunctive relief.

## ANALYSIS

### A. The State's Motion to Dismiss

As a threshold matter, the Court feels it is appropriate to address the State's Rule 12(b)(6) motion to dismiss before proceeding to review the merits of the plaintiffs' motions. When considering a motion to dismiss pursuant to Rule 12(b)(6), a court "must accept all material allegations of the complaint as true and construe them in the light most favorable to the nonmoving party." *Garrett v. Commonwealth Mortgage Corp. of America*, 938 F.2d 591, 593 (5th Cir. 1991). Dismissal is not appropriate unless "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Hernandez v. Maxwell*, 905 F.2d 94, 96 (5th Cir. 1990). In making this determination, the Fifth Circuit has stated that it is inappropriate to go beyond the face of the pleadings. *See id.*

In this case, the State contends that it is not a proper defendant because it enjoys immunity from suit in federal court under the Eleventh Amendment to the Constitution of the United States. The Supreme Court has held that, under the Eleventh Amendment, "an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State." *Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974). However, the Eleventh Amendment does not bar a federal court from granting prospective injunctive relief against state

officials whose enforcement of particular laws would violate the Fourteenth Amendment. *See id.* at 664 (discussing *Ex Parte Young*, 209 U.S. 123 (1908)).

The State in its brief asserts that it has not consented to suit in federal court. The language and history of the Eleventh Amendment clearly seem to preclude the plaintiffs' maintenance of a suit against the State in this Court. This defense is one obviously available from the face of the pleadings, and no set of facts construed in the plaintiffs' favor can surmount it. Accordingly, this Court will grant the motion to dismiss the State as a defendant.

The Eleventh Amendment defense is not available to state officials whose enforcement of section 1116.1 would violate the Fourteenth Amendment. The Fourteenth Amendment makes the Fourth Amendment applicable to the states, so that implementation of a statute that violates the latter necessarily violates the former. Since the central allegation in this case is that section 1116.1 is unconstitutional under the Fourth Amendment, the Governor and other individuals named in their official capacities are proper defendants. To the extent that the State's motion seeks dismissal of any of these other defendants, the Court will deny its motion.

The State's next argument for dismissal is that plaintiff O'Neill lacks standing, since he is a judicial official who is specifically exempted from the scope of the drug testing law. The inquiry into whether a particular plaintiff has standing to contest the constitutionality of a statute hinges on that plaintiff's ability to demonstrate an injury that is fairly traceable to the challenged conduct. *See Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26,

41-42 (1976). Absent such a showing, a federal court lacks jurisdiction to entertain the claim. *See id.* at 37-38.

In Louisiana, all judges "shall be governed exclusively by the provisions of the Code of Judicial Conduct, which shall be administered by the Judiciary Commission." La. Rev. Stat. Ann. § 42:1167 (West 1990). Louisiana courts have determined that justices of the peace "are judges within the contemplation of the law." *Morris v. State Farm Ins. Co.*, 649 So. 2d 58, 63 (La. Ct. App. 1994).

In his complaint, O'Neill describes himself as an elected justice of the peace. His conduct in office is therefore solely governed by the Code of Judicial Conduct, and the Board of Ethics, which will administer the drug tests, exercises no authority over him. O'Neill concedes this much in his response to the State's motion. Since section 1116.1 cannot apply to O'Neill, he is unable to demonstrate the requisite injury to satisfy constitutional standing requirements. He therefore lacks standing to sue, and the State's motion to dismiss will be granted as it pertains to O'Neill's claim. The Court notes, however, that the remaining plaintiffs are clearly subject to the Board's jurisdiction and possess standing to maintain their claims. To the extent that the State seeks to dismiss these plaintiffs' complaints, its motion will be denied.

The State's final basis for its motion to dismiss is that this Court lacks jurisdiction to adjudicate the question of whether section 1116.1 violates the Constitution of the State of Louisiana. Because this court finds that the statute's violation of the Constitution of the United States disposes of the case, it will not address this last argument and will deny this part of the motion as moot.

## B. The Plaintiffs' Requests for Injunctive Relief

### 1. Standard of Review

Rule 65(a) provides for the issuance of preliminary injunctions, and also permits a court to "order the trial of the action on the merits to be advanced and consolidated with the hearing of the application." Fed. R. Civ. P. 65(a)(2). Courts view the preliminary injunction as an extraordinary remedy, available only after the movant "by a clear showing, carries a burden of persuasion." *Black Fire Fighters Ass'n of Dallas v. City of Dallas, Tex.*, 905 F.2d 63, 65 (5th Cir. 1990). That burden of persuasion requires the movant to show the existence of four separate factors: 1) irreparable injury; 2) substantial likelihood of success on the merits; 3) a favorable balance of hardships; and 4) no adverse effect on the public interest. *See id.* If the movant fails to sufficiently establish any one of these four criteria, the preliminary injunction will not issue. *See id.* Due to the consolidation of the trial on the merits with the hearing for the preliminary injunction in this case, the foregoing calculus defines the task the plaintiffs must accomplish in order to win permanent injunctive relief.

It is settled, and the parties agree, that a drug test is a search within the meaning of the Fourth Amendment. *See National Treasury Employees Union v. Von Raab*, 489 U.S. 656, 665 (1989); *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 614-16 (1989). Since a finding that section 1116.1 violates the Fourth Amendment would constitute sufficient grounds for granting the plaintiffs' motions and

enjoining the statute's enforcement, the Court will confine its inquiry to evaluating whether the Louisiana testing scheme survives Fourth Amendment scrutiny.

**2. Legacy of the Fourth Amendment**

The actual intentions of the Framers in drafting the Fourth Amendment have provoked extensive debate throughout our history. While the Framers' precise thoughts may elude us, some scholars reviewing the history at the time of the Amendment's enactment believe that there is support for the notion that the drafters did contemplate the existence of both warrantless and non-warrantless searches.

The Fourth Amendment has distinct historical origins and the protections it affords can be traced to events occurring immediately prior to, and during, the American Revolution. *See* Jacob W. Landynski, Search and Seizure and the Supreme Court 19 (1966). The Fourth Amendment's drafters were aware of the famous *Wilkes* cases taking place in England during the 1760s. *See Boyd v. United States*, 116 U.S. 616, 625-27 (1886); Tracey Maclin, *The Complexity of the Fourth Amendment: A Historical Review*, 77 B.U.L. Rev. 925, 933-34 (1997). The cases reversed common law in holding that unauthorized intrusions on private property by officials were trespass actionable against the intruding party and the issuer of the warrant. *See Boyd*, 116 U.S. at 626; Maclin at 933-34.

Colonial citizens also protested the Excise Act of 1754, which allowed tax collectors to interrogate citizens regarding annual alcohol consumption. *See* Maclin at 943.

Colonists feared that private residence searches would be the result of such broad governmental authority, and the public outcry against the issuance of these general warrants eventually led to legislation requiring specific warrants and the Warrant Clause of the Fourth Amendment. *See United States v. Chadwick*, 433 U.S. 1, 7-8 (1977); *Boyd*, 116 U.S. at 624-29; Maclin at 943-44.

Though warrantless searches and the issuance of general warrants were strongly disfavored, there is evidence that such searches were not considered absolutely prohibited at the time the Fourth Amendment was drafted. *See* Maclin at 946. The Amendment was proposed by the First Congress which also enacted the Collection Act of 1789. *See id.* at 935. The collection Act authorized American officers to search ships without warrants, request that a judge retroactively find probable cause for a search or seizure, and otherwise immunize officers from tort lawsuits. *See id.*

In contrast to this assessment, the Fourth Amendment's jurisprudential history is rich with emphasis on the requirement of a warrant before a search could occur. The Supreme Court has required warrants for searches and seizures conducted under governmental authority, with few exceptions. *See Schmerber v. California*, 384 U.S. 757, 770 (1966) (both probable cause and a search warrant "are ordinarily required" for searches of dwellings and intrusions upon the body); *see also Stoner v. California*, 376 U.S. 483 (1964). In *Preston v. United States*, 376 U.S. 364 (1964), the Court held that police could search a person and his immediate surroundings incident to the legal arrest of that person. In *Warden v. Hayden*, 387 U.S. 294 (1967), the Court allowed police entries onto private

property when in hot pursuit of a suspect. These exceptions to the warrant requirement were grounded in concerns for officer safety and the potential destruction of evidence. *See id.* at 298-99; *Preston,* 376 U.S. at 367.

The Supreme Court employed a balancing analysis in *Camara v. Municipal Court,* 387 U.S. 523 (1967), to determine the reasonableness of nonconsensual housing inspections conducted without a warrant. The Court weighed the public need for housing code compliance inspections against the intrusions upon individual privacy interests. *See id.* at 534-36. The majority found the inspections reasonable under the Fourth Amendment, but also noted that there was no urgent need for immediate access to the homes. *See id.* at 538-540. The Court held that warrantless inspections were prohibited because the inspections were significant intrusions upon Fourth Amendment rights, and the public interest in housing code compliance would not be endangered by first requiring a warrant supported by probable cause. *See id.* at 534, 539.

In *United States v. Martinez-Fuerte,* 428 U.S. 543 (1976), the Supreme Court held that the Border Patrol's use of checkpoint stops to detect the flow of illegal Mexican aliens was consistent with the Fourth Amendment. The Court again employed a balancing of the public and private interests at stake. *See id.* at 556-57. Even though the stops were not based on any individualized suspicion, the Court concluded that the government's interest in controlling the influx of smugglers and illegal aliens outweighed the limited intrusion on individual citizen interests. *See id.* at 557-58. Given the heavy volume of border traffic and the very brief opportunity for detecting

aliens before they enter the country, the Court expressly declined to require reasonable suspicion as a basis for stopping cars; to do so would be impractical. *See id.* at 556-57.

The Court also emphasized that the stops were mere visual inspections and did not involve searches of the vehicles or their occupants. *See id.* at 558. The Fourth Amendment's objective of preventing arbitrary and oppressive invasions of personal privacy and security interests was not frustrated when governmental interests were compelling or urgent and the challenged procedure imposed only limited intrusions on the citizenry. *See Camara,* 387 U.S. at 539-40; *see also Martinez-Fuerte,* 428 U.S. at 554-57.

The Supreme Court held in *New Jersey v. T.L.O.,* 469 U.S. 325 (1985), that the search of a student's purse by a school official did not violate the Fourth Amendment. The majority explained that the school had a legitimate interest in maintaining order and a warrant requirement would be impractical when swift and effective discipline was necessary. *See id.* at 339-40. In his concurring opinion, Justice Blackmun wrote that in "exceptional circumstances," when the government has demonstrated the existence of "special needs, beyond the normal need for law enforcement," a court could resort to the balancing of government and individual citizen interests. *Id.* at 351.

### 3. Overview of Drug Testing

In recent years, when evaluating the constitutionality of suspicionless drug tests, the Court has continued to

require the existence of "special needs" *before* applying the balancing test. The Court's struggle to give some tangibility or concreteness to this concept is perhaps nowhere more evident than in cases involving Fourth Amendment challenges to drug testing laws. *See Chandler v. Miller,* 117 S. Ct. 1295 (1997); *Vernonia School Dist. 47J v. Acton,* 515 U.S. 646 (1995); *National Treasury Employees Union v. Von Raab,* 489 U.S. 656 (1989); *Skinner v. Railway Labor Executives' Ass'n,* 489 U.S. 602 (1989). These decisions have erected the guideposts this Court must follow.

The clash between drug testing and the Fourth Amendment is a recent phenomenon, with its genesis in the rise of drug abuse in this country during recent decades. The scourge of drug abuse naturally provoked attempts to control the problem. State and federal governments devised an array of weapons to combat what some had characterized as a threat to this country's security and prosperity. Programs including more aggressive law enforcement, interdiction, prevention, treatment, and education all emerged as tools in the arsenal. One of these approaches involved urinalysis of particular employees to ensure that they were not abusing drugs.

The Supreme Court has attempted to reconcile the need for such programs with the basic constitutional freedoms cherished by this nation. Review of a few key decisions is sufficient to canvass the terrain of the debate surrounding drug testing and privacy.

The Supreme Court's first significant treatment of the issue occurred in *Skinner v. Railway Labor Executives'*

*Ass'n*, 489 U.S. 602 (1989). In that case, the Court examined whether Federal Railroad Administration regulations mandating blood and urine tests of employees involved in accidents, and authorizing them for those who violated certain safety rules, passed constitutional muster. *See id.* at 606. After determining that the collection and analysis of urine samples implicated reasonable societal expectations of privacy and amounted to a search, *see id.* at 617-18, the majority emphasized that the Fourth Amendment only prohibited unreasonable searches and seizures, *see id.* at 619.

The hallmark of a reasonable search was one accomplished pursuant to a warrant based on probable cause and individualized suspicion, but the Court recognized that certain exceptions to this rule had evolved, particularly when the warrant and probable cause requirements were impracticable due to "special needs" beyond the normal need for law enforcement. *See id.* In cases where special needs justified a warrantless search, the inquiry hinged on the definition of reasonableness, which " 'is judged by balancing [the] intrusion on the individual's Fourth Amendment interests against [the] promotion of legitimate governmental interests.' " *Id.* (quoting *Delaware v. Prouse*, 440 U.S. 648, 654 (1979)). By conducting this balancing test, the Court sought to lend some tangibility to the concept of reasonableness and thereby to predict when a warrantless search would measure up to constitutional standards.

After recognizing that urine testing implicated reasonable expectations of privacy, the focus shifted to whether the government possessed a special need to conduct the screens. In *Skinner*, the Court held that, in certain

circumstances, where the intrusion was minimal and the important interest advanced by the government might be jeopardized by a requirement of individualized suspicion, a search might be reasonable even without individualized suspicion. *See id.* at 624. With these principles in mind, the Court reviewed the testing scheme and the privacy interests at stake in the case.

The Court determined that there existed a history of alcohol and drug abuse among railway employees, *id.* at 606-08, giving rise to a legitimate government interest in preventing accidents caused by employees' use of such substances, *id.* at 620-21. The Court found that these factors, coupled with the pervasive regulation that is characteristic of the railroad industry, *see id.* at 627, led to the conclusion that the government's compelling interest in safety and the individual's diminished expectation of privacy in the railroad context permitted urine testing, even without any showing of individualized suspicion, *see id.* at 633.

The Supreme Court confronted these issues again in *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646 (1995). In that case, an Oregon student and his parents challenged a local school district's policy of requiring student athletes to undergo random urinalysis for the detection of drugs as a condition of participation in school athletic programs. *See id.* at 651. The Court reiterated that such testing implicated the Fourth Amendment and applied the same test to assess the program's reasonableness. *See id.* at 652-53. In making the determination of whether a special need existed to suspend the normal individualized suspicion requirement in the context of a school

drug screening program, the Court debated many of the same arguments it considered in *Skinner.*

The majority concurred in the district court's assessment that drugs were a significant presence at the school in *Vernonia,* and that athletes' use of drugs and their status as role models for other students exacerbated this problem. *See id.* at 662-63. The Court located a safety issue in the concern for the welfare of children, who might be particularly susceptible to physical, emotional, and social damage from drug abuse. *See id.* at 661-62. Like the railway employees in *Skinner,* the students in *Vernonia* possessed a diminished expectation of privacy, due primarily to the in loco parentis role played by school officials. *See id.* at 655. Indeed, " 'students within the school environment have a lesser expectation of privacy than members of the population generally,' " and "[l]egitimate privacy expectations are even less with regard to student athletes." *Id.* at 657. In view of these factors, the majority concluded that the school district's policy was constitutional, but cautioned "against the assumption that suspicionless drug testing will readily pass constitutional muster in other contexts." *Id.* at 664-65.

*Skinner* and *Vernonia* revealed some common considerations the Court found persuasive in deciding whether to uphold a particular drug testing scheme. In both cases, it seemed that the majority opinions identified a history of drug abuse, a fairly immediate safety concern, and a diminished expectation of privacy as justifications for bestowing the Court's constitutional blessing on the programs at issue.

One of these considerations was absent in a related case decided the same day as *Skinner.* In *National Treasury Employees Union v. Von Raab,* 489 U.S. 656 (1989), the majority upheld a United States Customs Service drug testing plan that called for urine sampling of employees who applied for promotion to positions that involved interdiction of illegal drugs and required those hired to carry firearms or handle classified material. *See id.* at 679. The Court in *Von Raab* found that agents with a drug problem who occupied positions involving the use of weapons or handling of drugs posed a significant safety threat. *See id.* at 668-71. This meant that those employees enjoyed a diminished expectation of privacy, thereby justifying the use of drug tests. *See id.* at 672. Notably absent from the calculus in that case was any preexisting history of drug abuse on the part of the Customs agents. Indeed, the majority noted a statement by the Commissioner of Customs that, in his opinion, " 'Customs is largely drug-free.' " *Id.* at 660. Nevertheless, this agency was tasked with a unique mission since it served as the "first line of defense" against the smuggling of drugs into the United States. The Court in *Von Raab* concluded that the government had a compelling interest in assuring that employees placed in these positions would not include drug users.

*Von Raab* found that special needs existed and that the government interest was sufficiently compelling to justify suspicionless testing of the category of Customs employees at issue. *See id.* at 679.[1]

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[1] Some commentators have pointed to the absence of any history of drug abuse in *Von Raab* as creating a potential

In *Chandler v. Miller*, 117 S. Ct. 1295 (1997), candidates for elective office challenged a Georgia statute that required them to submit to and pass a drug test in order to qualify for state office. The Supreme Court found the law unconstitutional as violative of the Fourth Amendment. *See id.* at 1305. The Court reiterated its earlier position that collection and testing of urine samples by the government qualified as a Fourth Amendment search. *See id.* at 1300. Whether the searches at issue in *Chandler* were reasonable depended on the existence of some measure of individualized suspicion, unless the state could show some special needs, beyond the normal need for law enforcement, that justified a particularized exception to this rule. *See id.* at 1301. Determining whether such special needs existed forced the majority to "undertake a context-specific inquiry, examining closely the competing private and public interests advanced by the parties." *Id.* In the context of drug testing, Justice Ginsburg noted the Court's precedents establishing that "the proffered special need for drug testing must be substantial – important enough to override the individual's acknowledged privacy interest, sufficiently vital to suppress the Fourth Amendment's normal requirement of individualized suspicion." *Id.* at 1303.

In applying this analysis to the statute in *Chandler*, Justice Ginsburg observed that the state's defense of the

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slippery slope which the Court later recognized, prompting it to endorse a more restrictive view of suspicionless searches in *Chandler v. Miller*. *See* George M. Dery III, *Are Politicians More Deserving of Privacy Than Schoolchildren? How* Chandler v. Miller *Exposed the Absurdities of Fourth Amendment "Special Needs" Balancing*, 40 Ariz. L. Rev. 73, 91-94 (1998).

program relied heavily on the notion that holding high office and using drugs were incompatible. *See id.* Unlike the Court's previous drug cases, however, there did not exist "any indication of a concrete danger demanding departure from the Fourth Amendment's main rule." *Id.* Indeed, the majority found nothing in the record before it suggesting that "the hazards respondents broadly describe are real and not simply hypothetical for Georgia's polity." *Id.* While not dispositive, the Court also found it relevant that the state had not presented any evidence of a drug problem among candidates for elected office. *See id.* at 1303-04.

In summarizing its findings, the majority stated that "Georgia asserts no evidence of a drug problem among the State's elected officials, those officials typically do not perform high-risk, safety-sensitive tasks, and the required certification immediately aids no interdiction effort." *Id.* at 1305. Essentially, of the three primary factors the Court had looked for in its earlier decisions – history of drug abuse, immediate safety concerns, and diminished expectation of privacy – only the last was arguably present in *Chandler.* The Court held that this was not enough, since the "need revealed, in short, is symbolic, not 'special.' " *Id.* In contrasting *Chandler* with its earlier rulings, the majority cautioned that "if a need of the 'set a good example' genre were sufficient to overwhelm a Fourth Amendment objection, then the care this Court took to explain why the needs in *Skinner, Von Raab,* and *Vernonia* ranked as 'special' wasted many words in entirely unnecessary, perhaps even misleading, elaborations." *Id.* Justice Ginsburg made it clear that, "[h]owever

well-meant, the candidate drug test . . . diminishes personal privacy for a symbol's sake." *Id.* The Court concluded that the Georgia statute was unconstitutional, because where "public safety is not genuinely in jeopardy, the Fourth Amendment precludes the suspicionless seach, no matter how conveniently arranged." *Id.*

The *Chandler* opinion exhibits an apparent retrenchment in the Court's drug testing jurisprudence. While continuing to recognize that suspicionless searches are occasionally justified, Justice Ginsburg stressed that in cases where the requisite showing of a special need is lacking, there is no need to balance public and private interests because the Fourth Amendment bars such searches. In other words, the inquiry as it has matured from *Skinner* to *Chandler* is a two step process. First, a court must determine whether special needs exist that justify a suspicionless search. If, and only if, such special needs are present, a court may then proceed to the second phase, balancing public versus private interests. In *Chandler,* the Supreme Court never reached the second step because it found no special needs. This view appears consistent with the one held by the drafters of the Amendment, who apparently envisioned the possibility of warrantless searches so long as they were accompanied by some level of suspicion or exigent circumstance (i.e., "special needs").

**4. Constitutionality of the Louisiana Statute**

Having reviewed the jurisprudence applicable to drug testing, this Court will now turn its attention to the statute challenged in this case. Section 1116.1 clearly

states its intention to authorize drug testing "without the necessity of showing any measure of individualized suspicion." This proclamation means that, in order to survive Fourth Amendment scrutiny, the statute must meet the special needs test enumerated by the Supreme Court.

The defendants place great emphasis on the distinction between elected officials and candidates in their attempt to distinguish this dispute from *Chandler.* The tone of the majority opinion in that case, however, indicates that the *Chandler* Court saw little difference between the two groups. The majority explicitly referred to elected officials rather than candidates when it found that the statute's target group performed no safety sensitive tasks establishing the requisite special needs. Moreover, it is clear from the *Chandler* opinion that the only reason Georgia was interested in testing candidates was due to the prospect that they might later become elected officials. Absent this possibility, there was absolutely no reason to pass such a statute in the first instance. Furthermore, if it is improper to drug test a candidate for elected office, it seems incongruous to hold that once an individual is actually in office that person is somehow more susceptible to the very same search.

Because this Court finds no meaningful distinction between candidates for public office and those who have ascended to such office following an election, the principles of *Chandler* squarely control the outcome of this case.

There is no question that the proposed tests under section 1116.1 constitute searches within the meaning of the Fourth Amendment. This ordinarily triggers a requirement that the government display some measure

of individualized suspicion in order to justify the search. Since the Louisiana statute clearly states its intention to conduct suspicionless searches, the burden falls on the defendants to demonstrate that there exist some "special needs," beyond the normal needs of law enforcement, that support a particularized exception to the main rule.

In the present case, the defendants acknowledge the absence of any history or pattern of drug abuse among elected officials. No evidence has been presented to suggest that such a problem exists. While the defendants assert, and it is true, that the lack of an existing pattern of abuse is not by itself sufficient to strike down a drug testing statute, other considerations in conjunction with this one are fatal to section 1116.1.

As for any immediate safety threat to the public, the defendants advance essentially the same generalized arguments rejected by the majority in *Chandler*. To paraphrase Justice Ginsburg, nothing in the record before this Court hints that the hazards the defendants broadly describe are real and not simply hypothetical to Louisiana's polity. Moreover, the *Chandler* Court specifically found that elected officials do not occupy safety sensitive positions within the meaning of its drug testing jurisprudence.

What is left, then, is the diminished expectation of privacy characteristic of all public officials. This factor is certainly persent, but it was also present in *Chandler* and failed to sway the majority. Notwithstanding the defendants' arguments to the contrary, then, the purpose of section 1116.1 is largely symbolic. Despite the laudable

intentions of the legislature in trying to present an example for the public, the Supreme Court has stated unequivocally that symbolism alone is insufficient to justify suspicionless searches in violation of the Fourth Amendment.

In summary, this Court concludes that the defendants have failed to carry their burden in demonstrating that "special needs" beyond the normal needs of law enforcement exist, such that an exception to the rule requiring individualized suspicion is warranted. For this reason, Louisiana's proposed scheme of random, suspicionless drug testing under section 1116.1 is an unconstitutional search in violation of the Fourth Amendment.

Having analyzed section 1116.1 under the Fourth Amendment, the Court must now factor its conclusion into the calculus for determining whether to grant the preliminary injunctions sought by the plaintiffs in this case. As stated at the outset of this Order, whether to grant a preliminary injunction depends on the movant showing the presence of each of four separate criteria: 1) irreparable injury; 2) substantial likelihood of success on the merits; 3) a favorable balance of hardships; and 4) no adverse effect on the public interest.

The Fourth Amendment discussion detailed above indicates that the plaintiffs satisfy the second requirement. Since a finding of unconstitutionality ensures that the plaintiffs would prevail on the merits, the Court need not address the other proffered grounds for striking down the statute. The Court finds that the plaintiffs fulfill the irreparable injury requirement since money damages would not be adequate to redress the constitutional

harms implementation of the drug testing program would cause. The balance of hardships also weighs in favor of granting the requested relief. The impermissible invasion of privacy occasioned by section 1116.1 is far graver than any inconvenience the defendants may experience as a result of an injunction against the statute's enforcement. Finally, while there is certainly an argument that the public has an interest in seeing Louisiana's drug testing scheme implemented, this general interest falls short of the plaintiffs' countervailing one in preserving the basic protections afforded by the Fourth Amendment. Since no "special needs" beyond the normal needs of law enforcement exist to justify suspicionless searches in this situation, the public's interest in preventing drug abuse among elected officials, while not insignificant, cannot supersede one of the Constitution's most fundamental proscriptions.

The plaintiffs have demonstrated that they meet each of the four requirements for the issuance of a preliminary injunction. In light of the parties' stipulations in this matter, the Court will grant the plaintiffs' motions and permanently enjoin enforcement of section 1116.1.

## CONCLUSION

For the foregoing reasons, IT IS ORDERED that the motion of defendants State of Louisiana and Governor M. J. "Mike" Foster to dismiss the plaintiffs' motions pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is hereby GRANTED IN PART, such that the State of Louisiana is dismissed as a defendant due to its Eleventh Amendment immunity and the complaint of plaintiff

Phillip E. O'Neill is dismissed for lack of standing, and DENIED IN PART, as it relates to all other parties and claims. The motion of plaintiff Avery C. Alexander and the motion of plaintiff Arthur A. Morrell for preliminary injunction against the enforcement of title 42, section 1116.1 of the Louisiana Revised Statutes are hereby GRANTED, and the defendants are hereby PERMANENTLY ENJOINED from implementing or enforcing the statute since it violates the Fourth Amendment to the Constitution of the United States.

New Orleans, Louisiana
This 24 day of November 1998.

/s/ Eldon E. Fallon
UNITED STATES
DISTRICT JUDGE

## APPENDIX 3

### §1116.1. Random drug testing of elected officials

A. The legislature declares the interest of the state in ensuring that those who are elected to serve in public office at all levels of government are persons who have a respect for the laws they are to uphold and are persons of integrity, sound judgment, reliability, and seriousness of purpose. The legislature finds that the use of illegal drugs which may impair the physical or mental ability of an elected official to function effectively in all aspects of his duties cannot be tolerated, and therefore the state has a compelling interest in establishing a requirement that all elected officials demonstrate that they do not use illegal drugs, without the necessity of showing any measure of individualized suspicion.

B.(1) The board shall develop and administer a program of random drug testing for elected officials, which shall require elected officials on a random basis to submit to a drug test which shall screen for the presence of illegal drugs. For the purposes of this Section, "illegal drug" means marijuana, opioids, cocaine, amphetamines, or phencyclidine, except that a drug taken in accordance with a lawful prescription shall not be considered an illegal drug.

(2) The board shall develop a plan which shall include a methodology for identifying and selecting those elected officials required to be tested for the use of illegal drugs. The board shall not disclose the name or identify the elected official selected for testing by name to the laboratory. Such plan shall include a confirmatory test to confirm that the positive results of the initial test are

correct. The definitions and the drug testing procedures and standards as provided in Chapter 14 of Title 49 of the Louisiana Revised Statutes of 1950 shall be applicable to the program developed by the board.

(3) The board shall develop the random drug testing program in a manner that will be effective in detecting and deterring illegal drug use by elected officials. The commissioner of administration and the secretary of the Department of Health and Hospitals shall, at the request of the board, provide assistance in the development, design, and implementation of the random drug testing program.

(4) The board shall adopt such rules and regulations as are necessary for the implementation of the random drug testing program in accordance with the Administrative Procedure Act.

C. The program developed by the board shall require the elected official to submit to a drug test at a laboratory approved by the board. The board shall maintain a list of such approved laboratories which meet the drug testing standards as set forth in Chapter 14 of Title 49 of the Louisiana Revised Statutes of 1950. All costs of the program, including the cost of all drug tests, shall be paid by the board. The board shall pay the cost of any confirmatory test required by this Section.

D.(1) All information, interviews, reports, statements, memoranda, or test results received by the board through its drug testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public

or private proceedings, except in a proceeding, hearing, or civil litigation for a violation of this Section.

(2) The results of a positive initial test shall only be disclosed to the tested elected official and to the person designated by the board to receive such information, but may be disclosed to the board or an authorized employee or agent of the board should the confirmatory test also indicate the presence of illegal drugs.

(3) Except as otherwise provided in this Subsection, no person shall disclose the name of the person selected for testing, the administration of the test, or the test results of any person tested pursuant to this Section to any person other than the board or an authorized employee or agent of the board, or the tested elected official.

(4) Notwithstanding the provisions of R.S. 42:1141(E)(12), an elected official shall be furnished a copy of the results of any drug test he has submitted to under the provisions of this Section and such elected official shall not be prohibited from disclosing the results of such drug test to any person.

E. No elected official shall test positive for illegal drugs nor refuse to submit to a drug test when requested to do so by the board pursuant to the provisions of this Section. A violation of this Section shall subject the elected official to the penalties provided by this Chapter. However, the board shall not impose any penalty on an elected official for testing positive for illegal drugs unless he has tested positive for illegal drugs on two separate occasions. For the purposes of this Subsection, a positive

initial test and the confirmatory test of such positive initial test shall be considered one occasion.

*Acts 1997, No. 1303, §1.*

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## APPENDIX 4

## Rules

## RULE

### Department of Civil Service
### Board of Ethics

Drug Testing of Elected Officials
(LAC 52:I:101 and Chapter 17)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Civil Service, Board of Ethics has promulgated rules for the random drug testing of elected officials as required by Section 1116.1 of the *Code of Governmental Ethics* (R.S. 42:1116.1).

No preamble to the rules has been prepared.

### Title 52

### ETHICS

### Part I. Board of Ethics

**Chapter 1. Definitions**

**§101. Definitions**

* * *

*Collection Agency* – a person selected by the board, which has collection sites throughout the state of Louisiana.

* * *

*Designated Representative* – a board-appointed member of the staff of the Ethics Administration Program, whose primary responsibility includes overseeing the

implementation of the program to enforce the random drug testing of elected officials.

* * *

*Person Authorized by an Elected Official* – a person or persons selected by the elected official who may receive notice of selection for testing. If the elected official chooses to select such a person to receive notice, the name and address of such person shall be provided by the elected official to the designated representative.

* * *

*Random Number* – the number assigned to the elected official, which ensures the confidentiality of the testing process.

*Random Number Selector* – a person selected by the board, responsible for the selection of those elected officials subject to the random drug testing.

*Random Process* – a generally accepted method to ensure that the elected officials are chosen by their random numbers in an unsystematic manner.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 23:1288 (October 1997), amended LR 24:1893 (October 1998).

## Chapter 17. Random Drug Testing for Elected Officials

### §1701. General

The board, pursuant to R.S. 42:1116.1, shall develop and administer a program to conduct random drug testing on elected officials by means of a urine specimen collected, stored and transported in a manner effective in detecting and deterring illegal drug use. The board shall adhere to the statutory definitions and guidelines in Chapter 14 of Title 49 of the Louisiana Revised Statutes of 1950 to implement the provisions of the random drug testing for elected officials.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1116.1 and R.S. 42:1141(B)(3).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 24:1893 (October 1998).

### §1703. Designated Representative; Duties and Responsibilities

A. The designated representative acts as the liaison between the board and the collection agency and the certified laboratories, and such duties shall be carried out as directed in Chapter 14 of Title 49 of the Louisiana Revised Statutes of 1950.

B. The designated representative shall provide the collection agency with a list of the names of the elected officials selected by the random number selector and the corresponding officials' random numbers.

C. The designated representative shall send a notice by commercial delivery to the elected official requiring

the elected official or a person authorized by the elected official personally sign the proof of receipt of the notice in order to notify the elected official that he has been randomly selected to submit to a drug test.

D. The designated representative shall obtain from the commercial delivery service a copy of the receipt containing the elected official's or authorized person's signature evidencing proof of delivery of the notice to the elected official. If the elected official or person authorized refuses or is unavailable personally to receive the notice, the commercial delivery service shall report the refusal or unavailability to the designated representative.

E. The designated representative shall ensure the confidentiality of all procedures associated with the testing of the elected official, including the selection, delivery of notice, subpoena, and testing results, unless otherwise expressly provided by law or by these rules.

F. Upon receipt of the results from the medical review officer, the designated representative shall provide the elected official with a certified copy of the results of the drug test.

G. Upon receipt of the medical review officer's analysis and confirmation of a positive result of the test, the designated representative shall submit the result of the test to the board for action pursuant to R.S. 42:1141(B)(3).

H. Upon request by the medical review officer, the designated representative shall obtain the medical records of the elected official whose test results are positive.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1116.1 and R.S. 42:1141(B)(3).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 24:1893 (October 1998).

**§1705. Random Selection of Elected Officials**

Each elected official shall be assigned a number by the designated representative. This number is utilized in the random selection process to ensure that the selection process and test results are kept confidential.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1116.1 and R.S. 42:1141(B)(3).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 24:1894 (October 1998).

**§1707. Selection Process; Random Number Selector**

A. The designated representative shall supply the random number selector with the random numbers that have been assigned to the elected officials. The random number selector shall select by a random process a percentage of the random numbers, as determined by the board.

B. The random number selector shall not, at any time, have access to the corresponding names of the elected officials.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1116.1 and R.S. 42:1141(B)(3).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 24:1894 (October 1998).

**§1709. Selection Process; Percentage**

The board, at its meeting immediately subsequent to the promulgation of these rules and at its April meeting every calendar year thereafter, or the next subsequent meeting if no meeting is held in April, shall determine the percentage of elected officials to be chosen by a random process for drug testing in the subsequent fiscal year. The board may apply the following guidelines:

1. 10 percent of all elected officials the first year; and

2. 5 percent increase every year thereafter, with a maximum of 50 percent of all elected officials to be selected to submit to a drug test.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1116.1 and R.S. 42:1141(B)(3).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 24:1894 (October 1998).

**§1710. Notice**

A. Notice to the elected official shall be delivered to the elected official or person authorized by the elected official by a commercial delivery service requiring the elected official or person authorized by the elected official to sign for the notice and ordering the elected official

to report to a designated collection site within 32 hours from receipt of the notice. A copy of the signature provided by the commercial delivery service shall evidence proof of delivery to the elected official. If the elected official or person authorized by the elected official refuses or is unavailable to sign the necessary form, the commercial delivery service shall notify the designated representative of the refusal or the unavailability.

B. If the elected official or person authorized does not receive the notice, the designated representative shall issue a subpoena at the date and time to be selected solely by the designated representative ordering the elected official to report to a designated collection site within 32 hours of the service of the subpoena. Such subpoena shall be personally served on the elected official.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1116.1 and R.S. 42:1141(B)(3).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 24:1894 (October 1998).

**§1711. Collection Agency; Duties and Responsibilities**

A. The board shall select a collection agency that utilizes the National Institute on Drug Abuse (NIDA) guidelines proscribed in Chapter 14 of Title 49 of the Louisiana Revised Statutes of 1950.

B. The random numbers and the corresponding names are submitted to the collection agency.

C. The collection agency shall maintain a record as to the date and time when the elected official reported to the collection site.

D. The collection agency shall provide the designated representative with the names of the elected officials who failed to report to the collection site within the time required.

E. The collection agency shall insure the transportation of the collected sample to a NIDA-certified or College of American Pathologists-Forensic Urine Drug Testing (CAP-FUDT)-certified laboratory to be analyzed according to Chapter 14 of Title 49 of the Louisiana Revised Statutes of 1950.

F. The collection agency shall provide a certified copy to the designated representative evidencing the chain of custody of each sample from collection of the sample to its receipt by the certified laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1116.1 and R.S. 42:1141(B)(3).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 24:1894 (October 1998).

**§1713. Collection Agency; Confidentiality**

The collection agency and its employees have a duty to conduct such collecting, storing and transporting of the sample in a confidential manner, respecting the privacy rights of the elected official. The contract between

the board and the collection agency shall prescribe penalties if the collection agency breaches the required confidentiality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1116.1 and R.S. 42:1141(B)(3).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 24:1894 (October 1998).

**§1715. NIDA-Certified and CAP-FUDT-Certified Laboratories**

A. The board shall maintain a list of laboratories that are certified by either NIDA or CAP-FUDT as provided by the Department of Health and Hospitals and to which the sample is submitted for testing in accordance with the guidelines in Chapter 14 of Title 49 of the Louisiana Revised Statutes of 1950.

B. Should the initial test of the sample of the elected official produce a negative result, the laboratory shall submit that result to the medical review officer who shall forward it to the designated representative for further processing and dissemination to the elected official.

C. Should the initial test of the sample of the elected official produce a positive result, the laboratory shall conduct a confirmatory test on the remainder of the split sample. The result elicited from the confirmatory test is submitted to the medical review officer for review.

D. The certified laboratory shall provide a certified copy to the designated representative evidencing the chain of custody of each sample from receipt of the

sample by the certified laboratory to its analyzation by the laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1116.1 and R.S. 42:1141(B)(3).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 24:1894 (October 1998).

**§1717. Second Separate Test**

A. If the board determines, pursuant to LAC 52:I.1727, that the elected official violated La. R.S. 42:1116.1, the board shall issue a subpoena for the appearance of the elected official at a collection site not less than one month and not more than six months after such determination.

B. The provisions of LAC 52:I.Chapter 17 and NIDA guidelines as set forth in Chapter 14 of Title 49 of the Louisiana Revised Statutes of 1950 shall be utilized in collecting, storing, transporting and analyzing the second separate sample.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1116.1 and R.S. 42:1141(B)(3).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 24:1895 (October 1998).

**§1719. Elected Officials; Duties and Rights**

A. Upon receipt of notification, the elected official has a duty to report to the designated collection site within 32 hours to submit a sample for testing.

B. The elected official has a right to receive from the designated representative a copy of the results of the test and the confirmation by the medical review officer, if necessary.

C. The elected official must, at the request of the designated representative, authorize the release of his medical records to the designated representative for review by the medical review officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1116.1 and R.S. 42:1141(B)(3).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 24:1895 (October 1998).

**§1721. Good Cause for Failure to Report to Collection Site**

A. Definition. For purposes of §1721, the following definitions shall apply:

*Good Cause* – any reason, in the considered judgment of the board or the designated representative, beyond the control of the elected official that directly prevents the elected official from reporting to the collection site within 32 hours of receipt of the notice or subpoena.

B. If an elected official cannot report for good cause, the elected official shall promptly file a written petition

with the designated representative outlining the reasons establishing good cause for his unavailability. If the designated representative finds good cause, a subsequent subpoena shall be issued at a date and time to be determined solely by the designated representative directing the elected official to report to a collection site to submit a sample.

C. If the designated representative does not find good cause, an elected official may request that the board conduct a private hearing to determine if the elected official had good cause which prevented him from reporting to the collection site within 32 hours from receipt of the notice or subpoena.

D. If the board determines that the elected official had good cause which prevented him from reporting to the collection site within 32 hours from receipt of the notice or subpoena, the board shall require that the designated representative issue a subsequent subpoena at a date and time to be determined solely by the designated representative directing the elected official to report to a collection site to submit a sample.

E. Should the board determine that the elected official did not have good cause to prevent him from reporting to the collection site within 32 hours from receipt of the notice by either commercial delivery or subpoena, such failure to report to the collection site shall constitute a refusal to submit to a drug test as provided in R.S. 42:1116.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1116.1 and R.S. 42:1141(B)(3).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 24:1895 (October 1998).

**§1723. Medical Review Officer; Duties and Responsibilities**

A. The board shall appoint a medical review officer, who is responsible for reviewing the positive results attained by the certified laboratory, using generally accepted medical practices in reviewing the test results.

B. The medical review officer is supplied with only the random number to identify the sample results that he reviews.

C. The medical review officer provides a report to the designated representative containing his analysis and findings.

D. The medical review officer shall forward negative results to the designated representative for further processing and dissemination to the elected official.

E. The medical review officer may require the designated representative to obtain the medical records of the elected official who tested positive if the medical records could supply any possible medical reasons to explain the positive results.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1116.1 and R.S. 42:1141(B)(3).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 24:1895 (October 1998).

**§1725. Test Result Records**

A. Should the initial or confirmatory test elicit a negative result, or if the board determines that the elected official did not violate La. R.S. 42:1116.1, then the designated representative shall destroy the test results 3 years after the elected official is notified of the negative result from the laboratory or 3 years after the board's determination that La. R.S. 42:1116.1 was not violated.

B. Should the initial and confirmatory tests elicit positive results, the Board shall retain all such test results as evidence in the event the elected official should subsequently at any time test positive for illegal drugs on a second occasion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1116.1 and R.S. 42:1141(B)(3).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 24:1895 (October 1998).

**§1727. Violations**

A. Should the initial and confirmatory tests elicit positive results, as well as confirmation of the positive test results by the medical review officer, the board may, and upon the request of the elected official shall, conduct a private hearing to determine if the elected official violated La. R.S. 42:1116.1.

B. Should the initial and confirmatory tests of the second separate test ordered by the board elicit positive results, as well as confirmation of the positive test results by the medical review officer, the board may, and upon

the request of the elected official shall, conduct a public hearing to determine if the elected official violated La. R.S. 42:1116.1 and to impose penalties.

C. If the elected official does not report to the collection site within 32 hours of receipt of the notice or service of a subpoena, or willfully evades service of a subpoena, the board may, and upon the request of the elected official shall, conduct a public hearing to determine if the elected official violated La. R.S. 42:1141B by refusing to submit to a drug test required pursuant to La. R.S. 42:1116.1 and if so what penalties to impose.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1116.1 and R.S. 42:1141(B)(3).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 24:1895 (October 1998).

R. Gray Sexton
Ethics Administrator

* * *

(2) Supreme Court, U.S.
FILED

No. 991552 MAR 22 2000

OFFICE OF THE CLERK

In The

# Supreme Court of the United States

STATE OF LOUISIANA, THROUGH THE HONORABLE MIKE J. FOSTER, JR., GOVERNOR; THE LOUISIANA STATE BOARD OF ETHICS, AND ITS MEMBERS; ROBERT ROLAND, HARRY BLUMENTHAL, JR., ROBERT BAREIKIS, Dr., E.L. GUIDRY, VIRGIL ORR, Dr., REVIUS ORTIQUE, JR., T.O. PERRY, JR., ROBERT L. SAWYER, NATHAN J. THORNTON, JR., EDWIN O. WARE, III, CAROLE COTTON WINN; DAVID W. HOOD, SECRETARY OF THE LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS; AND MARK C. DRENNEN, COMMISSIONER OF ADMINISTRATION,

*Petitioners,*

versus

PHILLIP E. O'NEILL, AVERY C. ALEXANDER, AND ARTHUR A. MORRELL,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit**

## APPENDIX
## VOLUME II, PAGES 54-315

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## APPENDIX 5

## Louisiana Constitution Article X

### § 24. Impeachment

Section 24. **(A) Persons Liable.** A state or district official, whether elected or appointed, shall be liable to impeachment for commission or conviction, during his term of office of a felony or for malfeasance or gross misconduct while in such office.

**(B) Procedure**. Impeachment shall be by the House of Representatives and trial by the Senate, with senators under oath or affirmation for the trial. The concurrence of two-thirds of the elected senators shall be necessary to convict. The Senate may try an impeachment whether or not the House is in session and may adjourn when it deems proper. Conviction upon impeachment shall result in immediate removal from office. Nothing herein shall prevent other action, prosecution, or punishment authorized by law.

* * *

### § 26. Recall

Section 26. The legislature shall provide by general law for the recall by election of any state, district, parochial, ward, or municipal official except judges of the courts of record. The sole issue at a recall election shall be whether the official shall be recalled.

* * *

### § 30. Oath of Office

Section 30. Every official shall take the following oath or affirmation: "I, . . . , do solemnly swear (or affirm) that I will support the constitution and laws of the United States and the constitution and laws of this state and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as . . . , according to the best of my ability and understanding, so help me God."

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## LOUISIANA ELECTION CODE

### Title 18

### § 1300.1. Recall authorized

Any public officer, excepting judges of the courts of record, may be recalled in accordance with the provisions of this Chapter. However, no recall petition may be submitted for certification to or accepted for certification by the registrar of voters of any other official if less than six months remain in the term of office.

Amended by Acts 1992, No. 949, § 1, eff. Jan. 1, 1993.

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### § 1300.2. Petition for recall election; campaign finance disclosure

A. (1) Whenever the recall of any public officer is sought, a petition shall be directed to the governor. The petition shall be limited to the request that an election be called and held in the voting area for the purpose of

recalling the officer. No recall petition shall seek an election for the recall of more than one public officer, individually, in the same recall petition.

(2) The secretary of state shall provide a form approved by the attorney general to be used for the petition for a recall election. Such form shall be in conformity with the provisions of this Chapter and R.S. 18:3. All recall petitions shall be on an approved form or on a form which contains the same information as required by the approved from and any petition not on such a form shall be invalid.

B. This petition shall be signed by a number of the electors of the voting area as will in number equal not less than thirty-three and one-third percent of the number of the total electors of the voting area wherein and for which a recall election is petitioned; however, where fewer than one thousand qualified electors reside within the voting area, the petition shall be signed by not less than forty percent of said electors.

C. (1) Prior to the entering of any signatures on a petition, the chairman designated to represent the petitioners shall file with the secretary of state a copy of the recall petition which will be used and upon receipt of the recall petition the secretary of state shall endorse thereon the fact and the date of filing. A copy shall be transmitted by the secretary of state to the registrar of voters for each parish in which the recall election is to be held. The chairman shall list on the petition every parish which is wholly or partially within the voting area in which the recall election is to be held. The petition shall be deemed filed when it is received in the office of the secretary of

state, or at the time it is postmarked by the United States Postal Service or is receipted on a return receipt request form, if it is subsequently received in the office of the secretary of state.

(2) The signed and dated petition shall be submitted to the registrar of voters for each parish within the voting area not later than one hundred eighty days after the day on which the copy of the petition was filed with the secretary of state. If the final day for submitting the signed and dated petition falls on a Saturday, Sunday, or legal holiday, the deadline for filing such petition shall be on the next day which is not a Saturday, Sunday, or legal holiday.

(3) The chairman shall file notice with the registrar on the third day before the petition is submitted to the registrar that he will submit the petition and the date of such submission, unless such submission is made within three days prior to the expiration of the period for submitting such petition. Such notice of submission shall be a public record. If the notice filed with the registrar on the third day before the petition is submitted includes a date for submitting the signed and dated petition which falls on a Saturday, Sunday, or other legal holiday, the registrar shall so inform the chairman and advise the chairman of the next day which is not a Saturday, Sunday, or other legal holiday and on which the petition is to be submitted.

D. Each elector, at the time of signing the petition, shall enter his address and the date on which he signed beside or underneath his signature; however, if a person is unable to write, as provided in R.S. 18:1300.4, the two

witnesses shall date their signatures. In addition, each petition shall be in compliance with the provisions of R.S. 18:3. In determining the number of qualified electors who signed the petition in any parish, the registrar of voters shall not count any signature which is undated or bears a date prior to the date on which the copy of the petition initially was filed with the secretary of state or after the date of the submission of the petition to the registrar except as otherwise provided in R.S. 18:1300.3(B). The registrar shall not receive or certify a petition submitted to him for certification unless it is submitted to him timely.

E. The secretary of state shall notify the Supervisory Committee on Campaign Finance Disclosure of the filing of a copy of a recall petition to be used to seek the recall of a public officer, including the date of such filing, the officer who is the subject of the petition, and the names and addresses of the chairman and vice chairman designated on the petition. The Campaign Finance Disclosure Act shall be applicable to persons supporting or opposing the recall of a public officer as provided in R.S. 18:1486.

Amended by Acts 1968, No. 590, § 1; Acts 1977, No. 473, § 1; Acts 1979, No. 148, § 1; Acts 1984, No. 672, § 1; Acts 1985, No. 754, § 1; Acts 1986, No. 669, § 1; Acts 1988, No. 909, § 1, eff. Jan. 1, 1989; Acts 1990, No. 107, § 1, eff. Jan. 1, 1991; Acts 1995, No. 555, § 1, eff. Jan. 1, 1996; Acts 1995, No. 1046, § 1, eff. June 29, 1995.

**§ 1300.3. Certification of registrar of voters; addition or withdrawal of signatures; form of names**

A. The registrar of voters of each parish in the voting area wherein a recall election is sought shall certify on the recall petition, within fifteen working days after it is presented to him for that purpose, the number of names appearing thereon, the number of qualified electors of the voting area within the parish whose signatures appear on the petition, and also the total number of electors of the voting area within the parish as of the date of the filing of the petition with the secretary of state. However, if any parish wholly or partially within the voting area has more than fifty thousand registered voters, the registrar of voters for each parish within the voting area shall complete such certification on the recall petition within twenty working days after it is presented to him for that purpose. Each registrar also shall indicate on the petition the names appearing thereon who are not electors of the voting area. Each person who participates in the review of the names on the petition for certification by the registrar as required in this Section shall initial each of those portions of the petition which he reviews for certification by the registrar.

B. The registrar of voters shall honor the written request of any voter who either desires to have his signature stricken from the petition or desires to have his signature added to the petition at any time after receipt of the signed petition as provided in R.S. 18:1300.2(C) but prior to certification of the petition or within five days after receipt of such signed petition, whichever is earlier.

C. When there is no registrar of voters, or deputy registrar of voters in any parish, or in case of the absence or inability of that officer, the clerk of the district court of the parish shall execute the certificate. Immediately after the recall petition is certified a copy of the petition shall be made and the original recall petition shall be sent to the governor by the officer executing the certificate. Such copy shall be retained in the office of the registrar of voters in each parish affected by the petition and shall be a public record.

D. When any officer designated in this Chapter refuses to execute the certificates provided for, any signer of a recall petition, or the chairman or vice chairman designated to represent the signers, may compel the execution of the certificates by summary process in the district court having jurisdiction over the officer.

E. The registrar of voters shall comply with the provisions of R.S. 18:3(C) when determining the number of qualified electors of the voting area who signed the petition.

Amended by Acts 1952, No. 127, § 16; Acts 1975, No. 338, § 1; Acts 1977, No. 473, § 1; Acts 1980, No. 247, § 1; Acts 1982, No. 166, § 1, eff. July 14, 1982; Acts 1984, No. 672, § 1; Acts 1985, No. 754, § 1; Acts 1989, No. 179, § 1, eff. Jan. 1, 1990; Acts 1992, No. 949, § 1, eff. Jan. 1, 1993; Acts 1995, No. 555, § 1, eff. Jan. 1, 1996.

### § 1300.4. Signature to recall petition

No person may sign any name to a recall petition other than his own, except in a case where a person is unable to write, in which case the incapacitated person shall affix his mark to the petition and the person circulating the petition shall affix the name and address of the incapacitated person, as well as the date on which the incapacitated person affixed his mark to the petition, provided he does so in the presence of two witnesses who shall also sign their names as witnesses to the mark.

Amended by Acts 1987, No. 831, § 1, eff. Jan. 1, 1988.

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### § 1300.5. Chairman and vice chairman designated in petition

The recall petition shall designate a chairman to act for the signers of the petition in all matters, and a vice chairman to act on order of the chairman or in case of the death, disability, absence, or resignation of the chairman. The petition shall include the full name and residence address of the chairman and the vice chairman. The chairman and vice chairman each shall be a qualified voter in the voting area from which the public official whose recall is being sought is elected.

Amended by Acts 1982, No. 778, § 1, eff. Aug. 4, 1982; Acts 1989, No. 727, § 1, eff. Jan. 1, 1990.

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**§ 1300.6. Acts prohibited; penalty**

A. It shall be unlawful for any person to circulate recall petitions or seek signatures to a recall petition within any polling place being used in an election on election day or within any place wherein absentee voting is being conducted, or within a radius of six hundred feet of the entrance to any polling place being used in an election on election day or any place wherein absentee voting is being conducted.

B. Whoever violates any provision of this Section shall be fined not more than five hundred dollars or be imprisoned for not more than six months, or both. On a second offense or any succeeding offense, the penalty shall be a fine of not more than one thousand dollars or imprisonment for not more than one year, or both.

Added by Acts 1993, No. 219, § 1.

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**§ 1300.7. Governor to order election; proclamation; publication**

A. If the required number of qualified electors of the voting area sign the petition for recall, the governor shall issue a proclamation ordering an election to be held for the purpose of voting on the question of the recall of the officer. The total number of registered voters in the voting area and the total number of registered voters in the voting area signing the petition shall be calculated from the totals on the certificates of all of the registrars of voters received by the governor. The governor shall issue

such proclamation within fifteen days after he receives the certified petitions from all of the registrars of voters in the voting area who have received petitions for certification. The proclamation shall order the election to be held on the next available date specified in R.S. 18:402(F). If the election is to be held on a primary election date, the proclamation shall be issued on or before the last day for candidates to qualify in the election. If the election is not to be held on a primary election date, then the proclamation shall be issued on or before the forty-sixth day prior to the election.

B. Immediately after the issuance of the proclamation, the governor shall publish the proclamation in the official journal of each parish in which the election is to be held. Within twenty-four hours after issuing the proclamation, the governor shall send a copy of the petition and proclamation, by registered or certified mail, to the clerk of the district court for each parish in which the election is to be held. If the election is to be held in Orleans Parish, the city of New Orleans, the copy of the petition and proclamation shall be mailed to the clerk of the criminal district court. A copy of the petition and proclamation also shall be sent to the secretary of state. Within twenty-four hours after he receives the copies, the secretary of state shall notify all other election officials having any duty to perform in connection with a recall election, including the parish board of election supervisors for the parish or parishes in which the election is held.

Amended by Acts 1978, No. 292, § 2, eff. July 6, 1978; Acts 1988, No. 909, § 1, eff. Jan. 1, 1989; Acts 1990, No. 107, § 1, eff. Jan. 1, 1991; Acts 1992, No. 949, § 1, eff. Jan. 1, 1993;

Acts 1995, No. 555, § 1, eff. Jan. 1, 1996; Acts 1997, No. 1420, § 1. eff. Jan. 1, 1998.

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**§ 1300.8. Voting area**

A. The voting area for an election to recall an officer is the area which composes the state, district, parish, municipality, or ward that the officer represents as of the date the petition is filed with the secretary of state.

B. This area is the basis on which to determine whether the signatures to the recall petition are sufficient and proper; the number of signatures required is determined by calculation of the number of electors of the voting area as set forth in R.S. 18:1300.2.

Amended by Acts 1995, No. 555, § 1, eff. Jan. 1, 1996.

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**§ 1300.9. Recall elections, conduct in accordance with Election Code**

Elections for the recall of any public officer shall be held under and in accordance with the applicable provisions of the Louisiana Election Code, except as otherwise specifically provided in this Chapter.

Amended by Acts 1978, No. 292, § 2, eff. July 6, 1978.

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**§ 1300.10. Commissioners of election**

The parish board of election supervisors shall name the three commissioners who shall compose the three election commissioners.

Amended by Acts 1988, No. 907, § 1, eff. Jan. 1, 1989.

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**§ 1300.11. Preparation of ballots; marking of ballots**

The ballots at recall elections shall be provided and supplied in the same manner as the ballots for general elections, and in accordance with general election laws, except as provided in this Chapter. All ballots shall be printed upon white paper, of uniform quality, texture, and size, and printed in black ink. At the top of the ballot, printed in large capital letters, shall be:

"SPECIAL ELECTION FOR THE RECALL OF

(Here state name and title of the officer whose recall is at issue.)"

Then shall follow the number and name of the election district and the location of the polling place. Then shall follow the dates of the election. Then shall follow, in separate lines on the ballot, the following:

FOR the Recall. ❑

AGAINST the Recall. ❑

After the words "FOR the Recall," shall be a blank square, and after the words "AGAINST the Recall," shall

be a blank square. The ballot shall have a printed instruction on its face in conformity with R.S. 18:1306(A), informing the voter of the types of marks which may be used to indicate his vote.

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**§ 1300.12. Results of election**

The majority of the votes cast shall determine the result of the recall election. If the proposition for the recall does not receive a majority of the votes cast, the effort to recall shall have failed. Votes shall be tabulated and returns made, declared, and promulgated as at a general election.

Amended by Acts 1995, No. 555, § 1, eff. Jan. 1, 1996.

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**§ 1300.13. Declaration of vacancy**

When the majority is in favor of the recall, the public officer is, ipso facto, recalled and removed from office, and the office shall be vacated upon receipt by the secretary of state of certified returns from all of the parish boards of election supervisors within the jurisdiction, and the office shall be filled as in the case of ordinary vacancies and according to the constitution and laws of the state. A public officer who has been recalled and removed from office shall not be appointed to succeed himself in the office from which he was recalled and removed.

Amended by Acts 1979, No. 229, § 2, eff. July 13, 1979; Acts 1999, No. 254, § 1, eff. Jan. 1, 2000.

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**§ 1300.14. Failure of recall**

In case any election is called and held for the purpose of deciding upon whether or not any public officer shall be recalled, and at the election the effort or recall fails, then no election shall be held to recall the same officer within eighteen months from date of the election at which the recall failed to carry.

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**§ 1300.15. Recall proceedings involving governor or Secretary of State**

In all cases where the governor's office is involved in a recall election, the Secretary of State shall issue the proclamation and act in all matters where it is made the duty of the governor to act, and in case the office of Secretary of State is involved, then the governor shall act instead of the Secretary of State.

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**§ 1300.16. Penalty**

Whoever violates any provision of this Chapter shall be fined not less then one hundred dollars nor more than

one thousand dollars, and imprisoned for not less than thirty days nor more than ninety days.

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**§ 1300.17. Right to contest preserved**

Nothing contained in this Chapter shall be construed to deny to any public officer recalled, or whose recall is sought, the right to contest the recall, or any proceedings in relation thereto, in any court of competent jurisdiction, for fraud or other illegality. The procedural provisions of Chapter 9, Part I, of this Code shall be applicable to such actions.

Amended by Acts 1986, No. 669, § 1.

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## Title 18. Louisiana Election Code

## Chapter 11. Election Campaign Finance

### Part I. General Provisions

**§1481. Short title**

This Chapter may be cited as the Campaign Finance Disclosure Act.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981.*

**§1482. Statement of purpose**

The legislature recognizes that the effectiveness of representative government is dependent upon a knowledgeable electorate and the confidence of the electorate in their elected public officials. The legislature, therefore, enacts this Chapter to provide public disclosure of the financing of election campaigns and to regulate certain campaign practices.

*Acts 1980, No. 786, §1.*

**§1483. Definitions**

As used in this Chapter, the following terms shall have the meanings herein given to each unless the context clearly indicates otherwise:

(1) "Affiliated organization" means any organization which is not a political committee but which directly or indirectly establishes, administers, or financially supports a political committee.

(2) "Aggregating period" means:

(a) For a political committee, except a political committee which supports only one candidate, the period from January first of the calendar year through December thirty-first of the same calendar year.

(b) For a candidate, the period from the date on which he became a candidate as defined herein through the closing date for the current report.

(c) For a committee which supports only one candidate, the period from the time when the committee first participates in the election through the closing date for the current report.

(3)(a) "Candidate" means a person who seeks nomination or election to public office, except the office of president or vice president of the United States, presidential elector, delegate to a political party convention, United States senator, United States congressman, or political party office. An individual shall be deemed to seek nomination or election to such office if he has:

(i) Since prior participation in an election, if any, received and accepted a contribution or made an expenditure, or has given his consent for any other person or committee to receive a contribution or make an expenditure with a view to influencing his nomination or election to office whether or not the specific public office for which he will be a candidate is known at the time the contribution is received or the expenditure is made, or

(ii) Taken the action necessary under the laws of the state of Louisiana to qualify himself for nomination or election to public office.

(b) Notwithstanding any provision of R.S. 42:1101 et seq. and specifically notwithstanding any provision of R.S. 42:1115, for purposes of R.S. 42:1123(5) a "candidate" shall mean a "candidate" as defined in this Paragraph and shall also mean any public servant required to file reports under the provisions of this Chapter.

(4) "Chairman" means the principal executive officer of a political committee regardless of his title.

(5) "Closing date" means the date through which the report is complete.

(6)(a) "Contribution", except as otherwise provided in this Chapter, means a gift, conveyance, payment, or deposit of money or anything of value, or the forgiveness of a loan or of a debt, made for the purpose of supporting, opposing, or otherwise influencing the nomination or election of a person to public office, for the purpose of supporting or opposing a proposition or question submitted to the voters, or for the purpose of supporting or opposing the recall of a public officer, whether made before or after the election.

(b) "Contribution" shall also include, without limitation:

(i) Contributions in-kind made for any of the purposes stated in this Paragraph, having an attributable monetary value in excess of twenty-five dollars. Contributions in-kind shall include without limitation: the donation by any person, other than a candidate or a political committee, of the services of paid employees, the value of which services exceeds twenty-five dollars, such

value to be the amount paid for such services; the donation of, or the donation of the right to use, any item of tangible property when the same is used or consumed and not exchanged or converted to cash or the equivalent of cash and when the accepting candidate, the chairman of the accepting political committee, or accepting person required to file reports under this Chapter and the campaign treasurer of such recipient, if any, determines that its value or the use value, when only the right of use is given, exceeds twenty-five dollars and such determination shall be prima facie evidence of the correctness of the valuation of the item or of the use value when applicable. In addition, successive donations made by the same person, which donations individually are valued below twenty-five dollars but which together exceed such amount, shall be deemed to be in-kind contributions and shall be aggregated for purposes of the requirements of this Chapter. Contributions shall also include expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents and shall be considered to be a contribution to such candidate.

(ii) A promissory note or written contract to make a contribution as defined above.

(iii) A payment to purchase campaign paraphernalia, such as campaign pins, buttons, badges, flags, emblems, hats, shirts, banners, literature, and similar items, other than expenditures made by a candidate or political committee to purchase its own paraphernalia.

(iv) A payment for tickets to a testimonial or similar fund-raising event.

(c) "Contribution" shall not include:

(i) Personal services provided voluntarily by any person without compensation or by any person who is employed for purposes other than solely campaign purposes by the reporting candidate, by a partnership of which he is a member, or by a corporation of which he owns a majority of the stock.

(ii) Any dues or membership fees of any membership organization or corporation made by its members or stockholders, if such membership organization or corporation is not organized primarily for the purpose of supporting, opposing or otherwise influencing the nomination for election, or election, of any person to public office. However, any funds of such an organization or corporation used for the purpose of contributions to candidates or committees or to publicly advocate support or defeat of a candidate or for expenditures as defined in this Chapter shall be reportable and all contributions made by such membership organization or corporation which are otherwise reportable under the provisions of this Chapter shall be reported.

(iii) A transfer of funds between political committees.

(iv) A loan.

(d) A contribution of anything of value other than money or an in-kind contribution shall be considered for all purposes of this Chapter as a contribution of money in the amount of the fair market value thereof.

(7) "District office" means the following offices but shall not include any major office:

(a) The office of a member of the Louisiana Legislature.

(b) All public offices elected parishwide.

(c) All public offices elected in more than one parish.

(d) All public offices elected in any election district containing a population in excess of thirty-five thousand as determined by the most recently published decennial federal census. All public offices elected in any city or parish election in a parish containing a municipality with a population of four hundred fifty thousand or more as determined by the most recently published decennial federal census.

(8) "Election" means any primary, general, or special election held, pursuant to the laws of this state or a parish or municipal charter or ordinance or a court order, to choose a public officer or nominee. For purposes of this Chapter, a primary election and a general election for a particular office shall constitute one election. For purposes of the reporting requirements for the support or opposition of a proposition or question submitted to the voters, "election" shall also mean any primary, general, or special election, except local option elections held pursuant to the provisions of Chapter 3 of Title 26 of the Louisiana Revised Statutes of 1950, at which a proposition or question is submitted to the voters in accordance with Chapters 6-A, 6-B, and 6-C of this Code.

(9)(a) "Expenditure" means a purchase, payment, advance, deposit, or gift, of money or anything of value made for the purpose of supporting, opposing, or otherwise influencing the nomination or election of a person to public office, for the purpose of supporting or opposing a proposition or question submitted to the voters, or for the purpose of supporting or opposing the recall of a public officer, whether made before or after the election.

(b) "Expenditure" shall also include:

(i) A promissory note or written contract to make an expenditure as defined above.

(ii) Expenditures in-kind which have an attributable monetary value in excess of twenty-five dollars, made for any of the purposes stated in this Paragraph. Expenditures in-kind shall include without limitation: the donation by any person, candidate, or political committee of the services of paid employees, the value of which services exceeds twenty-five dollars, such value to be the amount paid for such services; the donation of, or the donation of the right to use, any item of tangible property when the same is used or consumed and not exchanged or converted to cash or the equivalent of cash and when the donating candidate, the chairman of the donating committee, or the donating person required to file reports under this Chapter, and the campaign treasurer of such donor, if any, determines that its value or the use value, when only the right to use is given, exceeds twenty-five dollars and such determination shall be prima facie evidence of the correctness of the valuation of the item or the use value when applicable. In addition, successive donations made to the same person, which donations

individually are valued below twenty-five dollars but which together exceed such amount, shall be deemed to be in-kind expenditures and shall be aggregated for purposes of the requirements of this Chapter.

(c) Expenditures made by a public relations firm, an advertising agency, or agent for a candidate, political committee, or other person required to file reports under this Chapter shall be considered expenditures of the candidate, political committee, or such other person, and must be specifically reported as required by this Chapter. Each such firm, agency, or agent, which makes any expenditure for any candidate, political committee, or other person required to file reports under this Chapter, shall timely furnish to such candidate, political committee, or person such information relative thereto as may be required for compliance with this Chapter.

(d) "Expenditure" shall not include:

(i) Personal services provided voluntarily by any person without compensation or by any person who is employed for purposes other than solely campaign purposes by the reporting candidate, by a partnership of which he is a member, or by a corporation of which he owns a majority of the stock.

(ii) Any communication by any membership organization or business entity to its employees, members, or stockholders, if such membership organization or business entity is not organized primarily for the purpose of supporting, opposing, or otherwise influencing the nomination for election, or election, of any person to public office or for the purpose of supporting or opposing a proposition or question to be submitted to the voters. All

other expenditures made by such membership organization or business entity which are otherwise reportable under the provisions of this Chapter shall be reported. For purposes of this definition, business entity means any proprietorship, partnership, corporation, or other legal entity, including their subsidiaries.

(iii) A transfer of funds between political committees.

(iv) A loan.

(e) An expenditure of anything of value other than money or an in-kind expenditure shall be considered for all purposes of this Chapter as an expenditure of money in the amount of the fair market value thereof.

(10) "Loan" means a transfer of money, property, or anything of value in exchange for an obligation to repay in whole or in part, made for the purpose of supporting, opposing, or otherwise influencing the nomination for election, or election, of any person to public office, for the purpose of supporting or opposing a proposition or question submitted to the voters, or for the purpose of supporting or opposing the recall of a public officer, whether made before or after the election.

(11) "Major office" means the following offices: governor, lieutenant governor, secretary of state, attorney general, state treasurer, commissioner of agriculture, commissioner of insurance, commissioner of elections, the superintendent of education, public service commissioner, and justice of the supreme court, as long as these offices are elective offices, and any candidate for office with an election district containing a population in excess

of two hundred fifty thousand persons as determined by the most recently published decennial federal census.

(12) "Participation" or "participating" in an election means the following:

(a) With regard to a candidate, that the candidate was opposed by another candidate in the election; however, any person who is a candidate as defined in this Chapter shall be deemed to participate in the primary election whether or not the candidate has failed to qualify for office after becoming a candidate, has withdrawn from the election, or is unopposed therefor. Additionally, any candidate who withdraws from a general election subsequent to the primary election and prior to the general election who would have been qualified to appear on the general election ballot shall be deemed to participate in the general election, as shall the person who would have been opposed by the one withdrawing.

(b) With regard to a political committee, that the committee:

(i) With regard to the primary election, gave or received a contribution prior to the primary election from, to, or for a candidate participating in that primary election, made an expenditure in support of or in opposition to a candidate participating in that primary election, made a loan to or received a loan from a candidate or committee participating in that primary election, or made a transfer of funds to or from another committee participating in that primary election.

(ii) With regard to the general election, that the committee gave or received a contribution subsequent to

the primary election from, to, or for a candidate participating in the general election, made an expenditure in support of or in opposition to a candidate participating in the general election, made a loan to or received a loan from a candidate or committee participating in that general election, or made a transfer of funds to or from another committee participating in the general election.

(c) A candidate or committee which participates in a primary election or the general election shall be deemed to participate in the election.

(d) With regard to a person who solicits or receives any contribution or makes any expenditure in support of or in opposition to a proposition or question submitted to the voters, that said person solicited or received a contribution or made an expenditure of two hundred fifty dollars or more.

(13) "Person" means any individual, partnership, association, labor union, political committee, corporation, or other legal entity, including their subsidiaries.

(14)(a)(i) "Political committee" or "committee" means two or more persons, other than a husband and wife, and any corporation organized for the primary purpose of supporting or opposing any candidate, proposition, recall of a public officer, or political party, which accepts contributions in the name of the committee, or makes expenditures from committee funds or in the name of the committee, or makes a transfer of funds to or receives a transfer of funds from another committee, or receives or makes loans in an aggregate amount in excess of five hundred dollars within any calendar year.

(ii) "Political committee" or "committee" shall also include two or more persons, other than a husband or wife, and any corporation which supports or opposes any candidate, proposition, recall of a public officer, or political party, and which accepts direct payments for personal services related to an election or a campaign in the name of the committee in an aggregate amount in excess of five hundred dollars within any calendar year. Except that an entity that (aa) holds a license or permit duly issued by the appropriate governmental entity to provide the personal services provided, regularly does business in the area, and regularly has done business in the area for at least ninety days prior to the date the personal services are provided and (bb) the personal services provided are the same as the personal services regularly provided by the business in the normal and usual scope of its usual business activities shall not constitute a "political committee" for purposes of the requirements of R.S. 18:1491.1 through 1491.8 which would require such an entity to keep records and submit reports.

(iii) Any state central committee, parish executive committee, and any other committee of any political party which receives contributions or makes expenditures in such amount during such period shall be considered a "political committee" for the purposes of this Chapter.

(b) An entity that (i) during the reporting period has supported candidates in states other than Louisiana, (ii) has received less than fifty percent of its total receipts for the applicable reporting period from Louisiana candidates or committees formed to support Louisiana candidates, and (iii) has expended less than fifty percent, but

not more than twenty thousand dollars, of its total disbursements for the applicable reporting period in support of or in opposition to Louisiana candidates shall not constitute a "political committee" for purposes of requirements of R.S. 18:1491.1 through 1491.8 which would require such an entity to keep records and submit reports.

(15) "Principal campaign committee" means a political committee designated by a candidate pursuant to R.S. 18:1491.3(A) or a political committee which has designated subsidiary committee(s).

(16) "Public office" means any state, parish, municipal, ward, district, or other office or position that is filled by election of the voters, except those specifically excepted in Paragraph (3) of this Section.

(17) "Reporting period" shall mean those periods established by R.S. 18:1491.6(G) and R.S. 18:1495.4(G).

(18) "Subsidiary committee" means a political committee other than a principal campaign committee, designated by a candidate or by a principal campaign committee pursuant to R.S. 18:1491.3(B) or R.S. 18:1491.3(C) to receive contributions or make expenditures on behalf of the candidate or the committee.

(19) "Supervisory committee" means the Board of Ethics established in R.S. 42:1132 when functioning as the Supervisory Committee on Campaign Finance Disclosure, as provided in R.S. 18:1511.1, to enforce the provisions of this Chapter.

(20) "Transfer of funds" means any money, regardless of amount, received by a committee from another

committee or money given by a committee to another committee.

(21) *Repealed by Acts 1988, No. 994, §3, eff. Jan. 1, 1989.*

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981. Amended by Acts 1981, No. 59, §1, eff. June 17, 1981; Acts 1982, No. 266, §1, eff. July 18, 1982; Acts 1984, No. 492, §1; Acts 1986, No. 669, §1; Acts 1987, No. 722, §1, eff. July 16, 1987; Acts 1987, No. 831, §1, eff. Jan. 1, 1988; Acts 1988, No. 994, §§1, 3, eff. Jan. 1, 1989; Acts 1989, No. 179, §1, eff. Jan. 1, 1990; Acts 1990, No. 180, §1, eff. Jan. 1, 1991; Acts 1991, No. 252, §1, eff. July 2, 1991; Acts 1995, No. 1046, §1, eff. June 29, 1995. Acts 1997, No. 644, §1.*

**§1484. Disclosure reports; persons required to file**

Except as otherwise specifically provided, the following persons or their campaign treasurers, if any, shall file reports of contributions and expenditures as more specifically provided in this Chapter:

(1) Each candidate for major office or district office.

(2) Each candidate for any other public office who makes expenditures in excess of five thousand dollars or who receives a contribution in excess of two hundred dollars in the aggregate during the aggregating period.

(3) Each political committee.

(4) Any person other than a candidate or political committee required to file reports under the provisions of Part IV of this Chapter.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981; Acts 1988, No. 994, §1, eff. Jan. 1, 1989.*

**§1485. Filing; receipt by supervisory committee**

A. For purposes of this Chapter, a report, statement, or any other paper or document required to be filed with the supervisory committee shall be deemed to be filed when it is received either physically or electronically in the office of the supervisory committee in Baton Rouge, or at the time it is postmarked by the United States Postal Service or is receipted on a return receipt requested form, if it is subsequently received in the office of the supervisory committee in Baton Rouge.

B. If the date on which a report is required to be filed occurs on a weekend or holiday, the report shall be filed no later than the first working day after the date it would otherwise be due.

C. Each candidate for statewide office and each principal campaign committee of a candidate for statewide office that receives contributions or loans in excess of fifty thousand dollars in the aggregate during the aggregating period shall electronically file reports of contributions and expenditures with the supervisory committee through the Board of Ethics Computerized Data Management System as provided in R.S. 42:1158.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981. Acts 1984, No. 466, §1, §2; Acts 1998, 1st Ex. Sess., No. 123, §1, eff. Jan. 1, 1999.*

**§1486. Proposition elections; required reports; recall elections**

A.(1) Any person, including a political committee, who receives and accepts any contribution, loan, or transfer of funds, or makes any expenditure in support of or in opposition to a proposition or question submitted to the voters shall be required to file reports of such contributions and expenditures.

(2) Any person, including a political committee, who receives and accepts any contribution, loan, or transfer of funds, or makes any expenditure in support of or in opposition to the recall of a public officer shall be required to file reports of such contributions and expenditures.

(3) Except as otherwise specifically provided in this Section and in R.S. 18:1505.4 and 1505.5, the provisions for reporting and filing requirements, prohibited practices, recordkeeping, and penalties applicable to political committees shall apply to persons subject to the provisions of Paragraphs (1) and (2) of this Subsection.

B. These requirements shall be applicable only if the aggregate amount of contributions, loans, and transfers of funds received and accepted or expenditures made equals or exceeds two hundred dollars at any time during the aggregating period. "Aggregating period" for purposes of this Section shall mean the period from the date on which the first contribution is received or the first expenditure is made by the person or political committee, whichever is earlier, through the closing date for the last report required to be filed in accordance with this Chapter.

C.(1) The reports required as provided in Paragraph A(1) of this Section shall be filed not later than the thirtieth day prior to the election, which shall be complete through the fortieth day prior to the election, not later than the tenth day prior to the election, which shall be complete through the twentieth day prior to the election, and not later than the fortieth day after the election, which shall be complete through the thirtieth day after the election. During the period from midnight of the twentieth day prior to the election and extending through midnight of election day a report shall be filed within forty-eight hours after the time any contribution, loan, or transfer of funds is received and accepted or expenditure in excess of two hundred dollars is made; if such time falls other than during regular working hours, this report shall be filed with the supervisory committee on the next working day after the report is otherwise due. Such report shall provide information relative to such contributions, loans, and transfers of funds and expenditures in excess of two hundred dollars as provided in R.S. 18:1491.6(C). If the report filed on the fortieth day after the election shows a deficit, the person or political committee reporting shall be required to file supplemental reports as required by R.S. 18:1491.6(D).

(2) Any person or political committee who is required to file reports as provided in Paragraph A(2) of this Section shall file reports as provided in this Chapter according to the following schedule:

(a) Not later than the forty-fifth day after the initial filing of the copy of the recall petition with the secretary of state as provided in R.S. 18:1300.2(C), which report shall be complete through the thirty-fifth day after the

filing of the copy of the recall petition with the secretary of state.

(b) Not later than the one hundred thirty-fifth day after the filing of the copy of the recall petition with the secretary of state, which report shall be complete through the one hundred twenty-fifth day after the filing of the copy of the recall petition with the secretary of state.

(c) Not later than the two hundredth day after the filing of the copy of the recall petition with the secretary of state, which report shall be complete through the one hundred ninetieth day after the filing of the copy of the recall petition with the secretary of state, which report shall be the final report, unless the report shows a deficit, in which case supplemental reports shall be filed as required in R.S. 18:1491.6(D), or unless the person or committee is required to file reports as provided in Subparagraph (d) of this Paragraph.

(d) If the recall effort is successful in having the recall question submitted to the voters, the person or political committee shall be required to file reports as provided in Paragraph (1) of this Subsection.

*Acts 1987, No. 722, §1, eff. July 16, 1987; Acts 1988, No. 994, §1, eff. Jan. 1, 1989; Acts 1990, No. 180, §1, eff. Jan. 1, 1991; Acts 1995, No. 1046, §1, eff. June 29, 1995.*

**§1487. Reports, name and address**

Whenever the full name and address of a person is required to be in a report in this Chapter, the party responsible for filing the report shall list the full name and address of the person or the best information he can

obtain regarding that person if the full name and/or address is not available.

*Added by Acts 1988, No. 994, §1, eff. Jan. 1, 1989.*

## Part II. Political Committees

### §1491.1. Registration of political committees

A. Each political committee, including a subsidiary committee, which knows or anticipates that it will receive contributions or loans, make expenditures or loans, or make a transfer of funds to or receive a transfer of funds from another committee during a calendar year in the aggregate amount exceeding five hundred dollars shall file a statement of organization with the supervisory committee annually after January 1 and no later than January 31 of each calendar year. Any such committee organized after January 31 shall file the required statement of organization no later than the tenth day after its organization. Any committee which, after January 31, knows or anticipates that it will receive contributions, loans, or transfers of funds or make expenditures, loans, or transfers of funds in the aggregate in excess of five hundred dollars during the calendar year shall file the required statement of organization within ten days after the date on which it has information which causes it to know or anticipate that it will receive such contributions, loans, or transfers of funds or make such expenditures, loans, or transfers of funds. If a political committee which knows or anticipates that it will receive contributions, loans, or transfers of funds or make expenditures, loans, or transfers of funds in the aggregate in excess of five hundred dollars during a calendar year, is organized within ten days prior to any

election, it shall file the statement of organization required by this Section no later than the third day after such organizing. Any committee required to file supplemental reports under the provisions of R.S. 18:1491.6 shall file the annual statement of organization. The supervisory committee shall issue a certificate of registration to each committee which submits the statement required by this Subsection.

B. The statement of organization shall include:

(1) The name of the committee, and the address of the committee, or of its chairman if the committee has no address.

(2) The names, addresses, and relationships of affiliated organizations.

(3) The name and address of the campaign treasurer of the committee, if any, and of any deputy campaign treasurers of the committee.

(4) The name and address of the committee chairman and the name, address, and position of other principal officers and directors of the committee, if any.

(5) A statement, if applicable, that the committee is a principal campaign committee and the candidate by whom it is designated as a principal campaign committee, if any, or a statement if applicable, that the committee is a subsidiary committee and the committee or candidate by whom it is designated as a subsidiary committee.

(6) A listing of all banks, safety deposit boxes, or other depositories used for committee funds.

(7) The estimated number of members of the committee.

(8) Certification of membership as required by R.S. 18:1505.2(H)(2)(b), if applicable.

C. Any change in information previously submitted in the annual statement of organization shall be reported to the supervisory committee within ten days following the change.

D. No committee shall receive contributions or loans, make expenditures or loans or make a transfer of funds to or receive a transfer of funds from another committee in the aggregate in excess of five hundred dollars in any calendar year until it has filed the annual statement of organization required by this Section. Any committee which violates the provisions of this Subsection shall be subject to the penalties provided in R.S. 18:1505.5 and R.S. 18:1505.6.

E. The supervisory committee is hereby authorized to impose a fee not to exceed the amount of one hundred dollars for each statement required to be filed under this Section to be remitted to the supervisory committee together with the statement on or before the time the statement is required to be filed. Any statement submitted without the proper fee shall be deemed as not being properly submitted to the supervisory committee. All fees collected hereunder shall be used solely by the supervisory committee for the enforcement of the provisions of this Chapter, as appropriated by the legislature.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981; Acts 1988, No. 994, §2, eff. July 27, 1988.*

**§1491.2. Statement of dissolution**

A. Each political committee, including any subsidiary committee, which after having filed an annual statement of organization wishes to dissolve or disband and (1) determines that it no longer meets the criteria in R.S. 18:1491.1(A), or (2) determines that it will no longer receive any contributions, loans, or transfers of funds and will no longer make any expenditures, loans, or transfers of funds, shall file a statement of dissolution with the supervisory committee prior to dissolving. No committee which has unpaid debts or obligations or which has any funds on hand shall file a statement of dissolution, until any debts or obligations have been paid or otherwise extinguished and any funds have been expended or otherwise distributed. A statement of dissolution shall include (1) a certified statement by the committee chairman and campaign treasurer, if any, that the committee has not received contributions, transfers of funds, or loans, or made expenditures, transfers of funds, or loans in the aggregate during the calendar year in excess of five hundred dollars and does not anticipate doing so, or (2) a certified statement by the committee chairman and campaign treasurer, if any, that the committee will receive no contributions, transfers of funds, or loans and will make no expenditures, transfers of funds, or loans, during the remainder of the calendar year. The committee shall file a report of contributions and expenditures containing the information required in R.S. 18:1491.7 with the statement of dissolution.

B. No political committee shall dissolve or file a statement of dissolution as provided in Subsection A above and reorganize under a modified name, charter, or

organizational structure merely as a subterfuge to avoid the reporting and other requirements of this Part. Any committee which dissolves or files a statement of dissolution as provided in Subsection A above and is thereafter recreated with substantially the same membership and purposes with the intent to avoid the requirements of this Part, for purposes of this Part, shall be deemed not to have been dissolved and shall be subject to the provisions of this Part as if no dissolution had taken place and no statement of dissolution filed. In addition, any committee which violates the provisions of this Subsection shall be subject to the penalties provided in R.S. 18:1505.4, R.S. 18:1505.5, and R.S. 18:1505.6.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981.*

### §1491.3. Principal campaign committees; subsidiary committees; consolidation of reports

A. Each candidate may designate one political committee as his principal campaign committee. Such designation shall be in writing and a copy thereof shall be filed with the supervisory committee no later than ten days after such designation is made. Any committee which designates subsidiary committees shall be a principal campaign committee and shall file a self-designation as a principal campaign committee with the supervisory committee at the time it first files a designation of a subsidiary committee. A principal campaign committee of a candidate shall report, in lieu of the candidate, all information required to be reported by the candidate pursuant to R.S. 18:1495.4 and R.S. 18:1495.5.

B. A candidate or a committee which supports or has supported only one candidate may designate additional political committees as subsidiary committees of such candidate or committee.

C. Any committee, except a principal campaign committee, which is organized to support a single candidate shall be a subsidiary committee of the candidate or of the candidate's principal campaign committee unless the candidate files a statement in writing with the supervisory committee that the committee is not his subsidiary committee or a subsidiary of his principal campaign committee and unless he files such a statement the candidate or his principal campaign committee shall designate any such committee as a subsidiary committee within ten days after such committee is organized. No candidate shall file a statement that a committee is not his subsidiary committee or a subsidiary committee of his principal campaign committee if the candidate, his principal campaign committee, or a subsidiary committee of the candidate or of his principal campaign committee makes an expenditure, a loan, or a transfer of funds to or receives a contribution, a loan, or a transfer of funds, from the committee.

D. No committee organized primarily for the purpose of supporting a single candidate shall nominally support an additional candidate or candidates for the purpose of avoiding designation as a subsidiary committee and the requirements of this Part relating to the records and reports of subsidiary committees. Any committee which violates the provisions of this Subsection shall be subject to the penalties provided in R.S. 18:1505.4, R.S. 18:1505.5, and R.S. 18:1505.6.

E. A designation of a subsidiary committee shall be in writing and a copy thereof shall be filed with the supervisory committee no later than ten days after the designation is made. Any candidate who has designated a principal campaign committee shall also file a copy of the designation of each subsidiary committee with his principal campaign committee no later than ten days after the designation is made.

F. A political committee may not be designated as the principal campaign committee of more than one candidate. No political committee which supports or has supported more than one candidate may be designated as a principal campaign committee and no such committee shall be a subsidiary committee.

G.(1) Each subsidiary committee shall maintain all records required by this Part. Each subsidiary committee designated by a candidate shall furnish such records on a timely basis to the principal campaign committee of the candidate, if any, or if none, to the candidate by whom it was designated as a subsidiary committee. Each subsidiary committee designated by a principal campaign committee shall furnish such records on a timely basis to such principal campaign committee.

(2) Each principal campaign committee of a candidate shall receive records furnished to it by subsidiary committees of the candidate for which it is the principal campaign committee and shall consolidate them with its own records and records of the candidate and shall file with the supervisory committee a consolidated report for each report required by this Chapter for committees or candidates. Each principal campaign committee, other

than a principal campaign committee of a candidate, shall receive all records furnished to it by its subsidiary committees and shall consolidate them with its own records and shall file with the supervisory committee a consolidated report for each report required by this Part for committees.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981.*

**§1491.4. Campaign treasurers; campaign depositories; expenditures by check; petty cash fund**

A. The chairman of each political committee shall be the campaign treasurer of the political committee, unless the political committee appoints a campaign treasurer. Political committees also may appoint one or more deputy campaign treasurers. The names and addresses of any campaign treasurer or deputy campaign treasurer so appointed shall be filed with the supervisory committee in the statement of organization required by R.S. 18:1491.1, or if appointed after the statement of organization is filed, the names and addresses of any campaign treasurer or deputy campaign treasurer shall be reported to the supervisory committee within ten days following appointment.

B.(1) Any person may solicit contributions for or on behalf of the political committee, or sell political paraphernalia, including such items as buttons, flags and literature, or tickets to a testimonial or other fund-raising event, provided that all contribution(s) or proceeds are transmitted directly to the chairman of the political committee or its designated treasurer or a designated deputy

treasurer of the committee together with such information as may be required by this Chapter. No chairman of a political committee or designated treasurer or deputy treasurer shall accept such funds without such information and they shall be responsible under the provisions of this Chapter for any errors and omissions in records or reports of such funds. Any contributions or transfer of funds received by a political committee which has appointed a campaign treasurer shall be transferred to the campaign treasurer.

(2) When any person who is not the campaign treasurer or a deputy treasurer of a political committee makes any expenditure for the committee, he shall transmit directly to the campaign treasurer or a deputy treasurer all information concerning the expenditure required by this Chapter. The campaign treasurer of the committee shall be responsible under the provisions of this Chapter for any errors or omissions in the records or reports of such expenditures.

(3) For purposes of all reports required by this Chapter, all contributions received by or transferred to a campaign treasurer or a deputy treasurer of a political committee, and all expenditures made by a campaign treasurer or a deputy treasurer of a political committee or by any other person on behalf of the committee, shall be considered contributions or expenditures of the political committee.

C. Deputy campaign treasurers of a committee may exercise any of the powers and duties of a campaign treasurer as set forth in this Chapter when specifically

authorized to do so by the campaign treasurer and the chairman of the political committee.

D. The chairman of each political committee shall designate one or more national or state banks or state or federally chartered savings and loan associations or savings banks, or state or federally chartered credit unions, as the campaign depositories of the committee, and may invest in a money market mutual fund and designate such funds as a campaign depository. The committee chairman, the committee campaign treasurer, and any deputy treasurers shall deposit any contributions received by them into an account or accounts maintained at such depository or depositories. No expenditure shall be made by any committee chairman, committee campaign treasurer, deputy treasurer, or any other person on behalf of the committee, except by check drawn on such account or accounts, except as specifically provided in Subsection E. Each check drawn on any such account shall be made payable to a specific person, except a check made payable to petty cash. Each check drawn on such an account shall indicate the objects or services for which such check is drawn and such check shall be maintained as part of the records required by R.S. 18:1491.5. The name and address of such campaign depository so designated shall be filed with the supervisory committee in the statement of organization required by R.S. 18:1491.1. If any additional depositories are designated they shall be reported within ten days following such designation as required by R.S. 18:1491.1.

E. A political committee may maintain a petty cash fund or funds. A petty cash fund shall be maintained on an imprest system, that is, expenditures may be made in cash from the fund and the fund shall from time to time

be restored to its original amount by a transfer of funds from other committee funds of a sum equal to the aggregate of the sums expended from the fund. No expenditure in excess of one hundred dollars shall be made from the petty cash fund and no expenditure shall be made from the petty cash fund for any personal services, except for gratuities paid for the serving of food or drink. No expenditure shall be made from the petty cash fund in violation of R.S. 18:1531. A complete record of petty cash expenditures shall be maintained in accordance with the provisions of R.S. 18:1491.5(D).

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981; Acts 1985, No. 550, §1, eff. July 12, 1985; Acts 1993, No. 199, §1, eff. June 1, 1993; Acts 1997, No. 863, §1.*

**§1491.5. Maintenance of records; valuation of in-kind contributions and expenditures**

A. The chairman of each political committee and the campaign treasurer, if the chairman does not act as campaign treasurer, shall be responsible for providing and maintaining such records of campaign finances as are necessary to comply with the provisions of this Part, including but not limited to the records specifically required by this Section.

B.(1) Except as otherwise provided in this Section, the campaign treasurer of each political committee shall keep such records of campaign contributions received and accepted by him or a deputy treasurer as shall be necessary to comply with the provisions of this Part, including the names and addresses of all contributors, and the date of each contribution, the amount or value of

the contribution of whatever value, and a description and valuation of all in-kind contributions.

(2) Payments made to purchase campaign paraphernalia, such as campaign pins, buttons, badges, flags, emblems, hats, shirts, banners, literature, and similar items, other than expenditures made by a political committee for its own paraphernalia, and payments for tickets to testimonials and similar fundraising events are contributions, and records thereof shall be maintained, provided that:

(a) In the case of any single transaction involving the sale of items such as campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar material which is for an amount not in excess of twenty-five dollars and the proceeds of which are received and deposited by a political committee, no record need be kept by the campaign treasurer for such recipient committee, except the total amount received and deposited from such sale and the fact that such amount was received from such sale.

(b) No person shall sell or buy campaign paraphernalia in successive single transactions for amounts below those for which specific records are required by this Paragraph as a subterfuge to avoid requirements of this Part that names and addresses of contributors and dates and amounts of contributions be recorded, aggregated, and reported. Such transactions shall be considered single transactions and shall be recorded and reported as provided in this Part. Any person who violates the provisions of this Section shall be subject to the penalties

provided in R.S. 18:1505.4, R.S. 18:1505.5, and R.S. 18:1505.6.

(3) The campaign treasurer of each political committee shall also keep such records of campaign expenditures made or contracted as shall be necessary to comply with the provisions of this Part, including the name and address of the person or firm from whom goods or services were purchased or contracted, the date, the amount or value and the purpose of the expenditure, a description of the goods or services purchased or contracted, and a description and valuation of all in-kind expenditures.

(4) All transactions involving the sale of tickets to a testimonial or similar fundraising event shall be evidenced by a record of the names and addresses of the purchasers, the amount of tickets purchased, and the value of the tickets purchased.

C. The valuation of in-kind contributions or expenditures shall be the estimated fair market value thereof at the time received and expended.

D. A record shall be kept of all expenditures made from the petty cash fund for which provision is made in R.S. 18:1491.4, including the name and address of the person or firm from whom goods or services were purchased or contracted, the amount and the purpose of the expenditure, and a description of the goods or services purchased or contracted. In addition, a receipt shall be kept for each such expenditure in any case in which a receipt would normally be provided in the usual course of business.

E. A record shall be kept of each loan made by the committee to or from any person or political committee, together with the full name and address of the lender, of the recipient of the proceeds of the loan, and of any person who makes any type of security agreement binding himself or his property, directly or indirectly, for the repayment of all or any part of the loan. In addition, a record shall be kept of the repayment of each such loan and of the source of funds expended for repayment.

F. *Repealed by Acts 1993, No. 199, §2, eff. June 1, 1993.*

G. A record shall also be kept of:

(1) Cash investments and income received therefrom.

(2) All transfers of funds to or from another committee, the name and address of the committee to or from which the transfer is made and the date and amount thereof.

(3) All debts and obligations.

(4) The amount and date of each anonymous contribution and the date each is transmitted to the state as required by this Chapter.

(5) All other receipts, the name and address of the source, and the date and amount thereof.

(6) All other disbursements, the name and address of the person to whom made and the date and amount thereof.

H. Expenditures made by a public relations firm, an advertising agency, or agent for a political committee

shall be considered expenditures of the political committee and must be specifically reported as required by this Part. Each such firm, agency, or agent shall timely furnish to such political committee such information relative thereto as may be required for compliance with this Part. Failure by any such firm, agency or agent to timely furnish a political committee such information required for compliance with this Part shall be grounds for a civil action for damages.

I. A campaign treasurer shall preserve records required by this Part for six years; except a campaign treasurer for a committee which supports only one candidate shall preserve such records for two years after the final report which he is required by this Part to file for the election has been filed, including any supplemental reports required.

J. The accounts and records kept by a campaign treasurer under the provisions of this Part shall be available for inspection or use by the supervisory committee in connection with any investigation pursuant to this Chapter, or by any grand jury or court in connection with any proceeding instituted under the provisions of this Chapter; however, such accounts and records shall be kept strictly confidential by the supervisory committee and any court, except to the extent any contents thereof may become a public record in any judicial proceeding to enforce the provisions of this Chapter.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981; Acts 1988, No. 994, §1, eff. Jan. 1, 1989; Acts 1993, No. 199, §2, eff. June 1, 1993.*

**§1491.6. Reports required; reporting times and periods**

A. The chairman of a political committee and the campaign treasurer of the committee, if any, shall be responsible for filing a report of all information required in this Section and R.S. 18:1491.7 with the supervisory committee at the times required in this Section. The political committee chairman and campaign treasurer of the committee, if any, shall certify, in each report, that the information contained in the report is true and correct to the best of their knowledge, information and belief, that no expenditures have been made and no contributions have been received that are not reported therein, and that no information required by this Part has been deliberately omitted.

B. A report shall be filed for a political committee for each regularly scheduled election in which the committee participates according to the following schedule:

(1) Each committee which is participating in the election of a candidate for major office shall file a report no later than the one hundred eightieth day prior to the primary election, which shall be complete through the one hundred ninetieth day prior to the primary election.

(2) Each committee which is participating in the election of a candidate for major office shall file a report no later than the ninetieth day prior to the primary election, which shall be complete through the one hundredth day prior to the primary election.

(3) Each committee shall file a report no later than the thirtieth day prior to the primary election, which shall

be complete through the fortieth day prior to the primary election.

(4) Each committee shall file a report no later than the tenth day prior to the primary election which shall be complete through the twentieth day prior to the primary election.

(5) Each committee shall file a report no later than the tenth day prior to the general election which shall be complete through the twentieth day prior to the general election. This shall be the final report for the election for any committee which does not participate in the general election, unless supplemental reports are required as provided in Subsection D of this Section.

(6) Each committee shall file a report no later than the fortieth day after the general election which shall be complete through the thirtieth day after the general election. This report shall be the final report for the election for any committee which participated in the general election, unless supplemental reports are required as provided in Subsection D of this Section.

(7) The final report of a committee that supports or opposes only one candidate who either withdraws as a candidate or is unopposed for election to the office he seeks shall be the next report due as required in this Subsection as of the date that the candidate withdraws or ascertains that he is unopposed, unless supplemental reports are required as provided in Subsection (D) of this Section. The report shall contain a statement that it is the final report and the reasons therefor.

C. During the period beginning at midnight of the twentieth day prior to a primary election and extending through midnight of primary election day, and during the period beginning at midnight of the twentieth day prior to a general election and extending through midnight of general election day, each committee shall file a report with the supervisory committee of:

(1)(a) The full name and address of each person from whom the committee has received and accepted a contribution, loan, or transfer of funds during such period in excess of the following amounts: a committee participating in the election of a candidate for any major office, five hundred dollars; a committee participating in the election of a candidate for district office, two hundred and fifty dollars; a committee participating in the election of a candidate for any other office, two hundred and fifty dollars. If the committee is participating in the election of candidates for offices with different reporting amounts, the amount shall be the lowest for any candidate in whose election the committee is participating or in which any committee is participating to which it makes or from which it receives a transfer of funds.

(b) Such report shall include the amount and date of each such contribution or loan reported, and a brief description and valuation of each in-kind contribution. If a loan is reported, the report shall contain the name and address of the lender, of the recipient of the proceeds of the loan, and of any person who makes any type of security agreement binding himself or his property, directly or indirectly, for the repayment of all or any part of the loan.

(2) Any expenditure in excess of two hundred dollars made to a candidate, committee, or person required to file reports by this Chapter, who makes endorsements, including the full name and address of each person to whom such expenditure is made, the amount, date and purpose of each such expenditure, and a brief description and valuation of an in-kind expenditure.

(3) Each report required by this Subsection shall be filed within forty-eight hours after the time the contribution or loan is received or expenditure made. If such time falls other than during regular working hours, the report shall be filed as soon as possible after the opening of the office of the supervisory committee on the next working day after the time at which the report is otherwise due.

D.(1) If the final report of a political committee for an election, as required by Paragraph (5), (6), or (7) of Subsection B of this Section shows a deficit, the chairman and treasurer of the committee, if any, shall file supplemental reports with the supervisory committee of all information required in R.S. 18:1491.7. Such reports shall be filed annually no later than February fifteenth and shall be complete through the preceding December thirty-first. Such a supplemental report shall be filed each year until a report has been filed which shows no deficit.

(2) A "deficit", for purposes of this Subsection, means debts or obligations owed by the political committee which are required to be reported by R.S. 18:1491.7(B)(14).

(3) A report need not be filed under this Subsection if the committee is dissolved or disbanded and shows a

deficit less than two thousand five hundred dollars. However, if the political committee is dissolved or disbanded and its deficit is equal to or greater than two thousand five hundred dollars, the political committee shall file supplemental reports with the supervisory committee of all information required in R.S. 18:1491.7. Such report shall be filed annually no later than February fifteenth and shall be complete through the preceding December thirty-first. Such report shall be filed each year for five years or until a report has been filed which shows no deficit.

E. A report shall be filed for each committee of all information required in R.S. 18:1491.7 no later than February fifteenth of each year which shall be complete as of the preceding December thirty-first. The annual report required by this Subsection shall not be required:

(1) If under another provision of this Section, the committee has filed another report of the information required by R.S. 18:1491.7 at any time after the preceding December tenth and prior to the February fifteenth due date, or

(2) If during the preceding year the committee has filed a supplemental report required by Subsection D of this Section and has not otherwise, during the reporting period, supported or opposed a candidate, as such term is defined in R.S. 18:1483(3), or

(3) If the committee has received no contributions, made no expenditures, received or made no loans, and received or made no transfers of funds during the reporting period for such report.

F. The reports required for any regularly scheduled election shall also be filed for any special election to the extent the dates for filing reports occur after the call for the election. The supervisory committee may promulgate rules to effect the provisions of this Subsection. Such rules may waive any report required to be filed within ten days after the call for a special election.

G. The reporting period for all reports of political committees, except the first report of a committee, shall be the period from the time through which the preceding report was complete through the closing date for the particular report. The reporting period for the first report of a committee shall be the period from the time when the committee was organized through the closing date for the particular report.

H. Principal campaign committees shall file consolidated reports for subsidiary committees as more specifically provided in R.S. 18:1491.3.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981. Amended by Acts 1982, No. 266, §1, eff. July 18, 1982; Acts 1984, No. 492, §1; Acts 1987, No. 757, §1; Acts 1988, No. 994, §1, eff. Jan. 1, 1989; Acts 1990, No. 180, §1, eff. Jan. 1, 1991.*

**§1491.7. Reports; contents**

A. Unless otherwise specifically provided, each report required by this Part shall contain the following information: (1) the name and address of the political committee for whom the report is filed; (2) the name and address of the treasurer completing the report; (3) the names and addresses of the committee chairman and of

the other principal officers; (4) the name, address, office sought, and party affiliation of each candidate whom the committee is supporting or opposing, and a designation as to whether such committee is supporting or opposing such candidate; (5) whether the committee is supporting or opposing the entire ticket of any party, and, if so, the name of the party; (6) if the report is for a principal campaign committee, a statement that the committee is a principal campaign committee and the name of the candidate, if any, and of all subsidiary committees for whom the principal campaign committee is reporting and the address of such committees, or if a committee has no address, the address of the committee chairman.

B. Each report required to be in conformity with this Section shall contain the following information:

(1) The amount of cash and cash investments on hand at the end of the prior reporting period.

(2) The total of all contributions received and accepted by the committee during the reporting period.

(3) Cash income from investments received during the reporting period.

(4) Contribution(s) received during the reporting period for which the report is being completed shall be reported, and the same shall be reported irrespective of the amount thereof as follows:

(a) The full name and address of each person who has made one or more contributions to and which have been received and accepted by the political committee during the reporting period; the aggregate amount of such contributions, except in-kind contributions, from

each person, and the date and amount of each such contribution; and a brief description of each in-kind contribution from each person, the valuation thereof made by the chairman and the campaign treasurer, and the date(s) of the in-kind contribution. Except that in the case of a political committee which supports multiple candidates and/or issues and which receives over ten thousand contributions in the form of a payroll deduction or dues check-off system when no single contributor contributes in excess of twenty four dollars in the aggregate in a calendar year, such committee may elect to report the names and addresses of its contributors on an annual basis. Political committees making this election shall list the names and addresses of its contributors, the total amount of the contributions received per contributor, and the schedule of the receipt of such contributions on the annual report due by February fifteenth complete through the preceding December thirty-first.

(b) The aggregate amount of all contributions, other than in-kind contributions, received and accepted during the reporting period.

(c) The aggregate valuation of in-kind contributions received during the reporting period.

(5) The gross proceeds received and accepted by the political committee during the reporting period from the sale of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials. Purchases of such campaign items and materials from the committee which are made by the same person and are of such amount as to be reportable, either singly or in the aggregate, under Paragraph (4)

hereof, shall be so reported; however, single transactions to purchase such items or materials which are for not in excess of twenty-five dollars must be reported only in the report of gross proceeds and shall not be required in Paragraph (4).

(6) The gross proceeds received and accepted by the political committee during the reporting period from the sale of tickets to testimonials or similar fundraising events. The proceeds of any such sale shall be considered a contribution, and such contributions shall also be reported as provided in Paragraph (4).

(7) The name and address of each political committee from which the reporting political committee received and accepted any transfer of funds during the reporting period, and the amount of each such transfer.

(8) Any other cash receipts, not contributions, received from any other source not included above during the reporting period, for example, refunds of overpayments and the nature, source, and an explanation thereof.

(9) Total of all receipts for the reporting period.

(10) The date and amount of each loan for campaign purposes made or received by the political committee to or from any person or political committee during the reporting period, together with the full name and address of the lender, of the recipient of the proceeds of the loan, and of any person who makes any type of security agreement binding himself or his property, directly or indirectly, for the repayment of all or any part of the loan.

(11) The total of all loans made and the total of all loans received during the reporting period.

(12) The total of all expenditures made by the committee during the reporting period.

(13) The full name and address of each person to whom an expenditure has been made by the committee during the reporting period. The amount, purpose, and date of each such expenditure, and the name and address of and office sought by candidates on whose behalf each such expenditure was made shall be reported. A brief description of an in-kind expenditure shall be given, as well as the valuation made by the chairman and the campaign treasurer and the date(s) of the expenditure. When multiple expenditures have been made to the same person during the reporting period, the aggregate amount of such expenditures, other than in-kind expenditures, and the aggregate valuation of in-kind expenditures shall be reported for each such person. The aggregate of all expenditures made during the reporting period, other than in-kind expenditures, and the aggregate valuation of all in-kind expenditures shall also be reported. The aggregate amount expended for each candidate shall also be reported.

(14) The amount and nature of debts and obligations owed by or to the political committee during the reporting period which relate to the conduct of any political campaign, including but not limited to loans required to be reported under Paragraph (10) of this Subsection.

(15) All payments made during the reporting period to repay loans, the amount, date, and source thereof.

(16) *Repealed by Acts 1993, No. 199, §2, Eff. June 1, 1993.*

(17) The total amount of expenditures during the reporting period from the petty cash fund.

(18) The name and address of each political committee to which the reporting political committee made a transfer of funds, during the reporting period, and the date and amount of each such transfer.

(19) The date and amount of each anonymous contribution received and the day each was transmitted to the state as required by R.S. 18:1505.2(B) during the reporting period and the total amount of such anonymous contributions received and transmitted during the reporting period.

(20) The amount of cash and cash investments of the committee on hand at the end of the reporting period.

(21) All other disbursements, not expenditures, during the reporting period, and the nature, recipient, and an explanation thereof.

(22) The total amount of expenditures during the reporting period made in relation to the publication, distribution, transportation, or transmission of statements relative to candidates or propositions which do not fully disclose the name of the individual or the name of the association, organization, committee, or corporation and the full and correct name and address of its chairman or other chief administrative officer and whether or not such individual, association, organization, committee, or corporation supports or opposes such candidate or proposition.

C. Expenditures made by a public relations firm, an advertising agency, or agent for a political committee shall be considered expenditures of the political committee and must be reported as required by this Section. Each such firm, agency, or agent, which makes any expenditure for any political committee shall timely furnish to such political committee such information relative thereto as may be required for compliance with this Part.

D. The supervisory committee, by rule, may require the reporting of totals of any information otherwise required to be reported, including totals of amounts reported in the current report, or in the current report and other previous reports.

E. The reports required in this Part shall be filed on forms provided by the supervisory committee as more specifically provided in R.S. 18:1511.3.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981; Acts 1988, No. 994, §1, eff. Jan. 1, 1989; Acts 1990, No. 180, §2, eff. Jan. 1, 1991; Acts 1990, No. 1088, §§1 and 2, eff. Jan. 1, 1991; Acts 1992, No. 751, §1, eff. July 7, 1992; Acts 1993, No. 199, §2, eff. June 1, 1993; Acts 1995, No. 300, §1, eff. June 15, 1995; Acts 1995, No. 957, §1.*

**§1491.8. Small campaigns; affidavit in lieu of reports**

Any political committee which did not receive a contribution in excess of two hundred dollars and which did not make expenditures totaling in excess of five thousand dollars in the aggregate during the aggregating period, may file an affidavit setting out such facts, in lieu of any

report required by R.S. 18:1491.6; but a separate affidavit shall be required in lieu of any such report.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981; Acts 1988, No. 994, §1, eff. Jan. 1, 1989.*

## Part III. Candidates

### §1495.1. Report through committee

A. Each candidate may designate a principal campaign committee as provided in R.S. 18:1491.3. If a candidate designates a principal campaign committee, the candidate shall maintain all records required by this Part and furnish them on a timely basis to his principal campaign committee. Each principal campaign committee shall receive all records furnished to it by the candidate, shall consolidate them with its own reports and shall file a consolidated report for reports required by this Chapter for candidates and committees as otherwise provided in this Chapter. In such case, the candidate shall not be required to file separate reports.

B. Each candidate may designate subsidiary committees as provided in R.S. 18:1491.3, and shall designate such subsidiary committees as required in said Section. Any candidate who designates subsidiary committees and who does not designate a principal campaign committee shall receive all records of the subsidiary committees, consolidate them with his own records, and file a consolidated report for reports required by this Chapter for candidates and committees.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981.*

**§1495.2. Campaign treasurers; campaign depositories; expenditures by check; petty cash fund**

A. The candidate shall be his own campaign treasurer, unless he appoints a campaign treasurer. Candidates also may appoint one or more deputy campaign treasurers. The names and addresses of any campaign treasurer or deputy campaign treasurer so appointed shall be filed with the supervisory committee at the time of the first report following appointment. Changes in appointment shall be reported in the first report after such change.

B.(1) Any person may solicit contributions for or on behalf of a candidate, or sell political paraphernalia, including such items as buttons, flags and literature, or tickets to a testimonial or other fund-raising event, provided that all contribution(s) or proceeds are transmitted directly to the candidate or his designated treasurer or a designated deputy treasurer together with such information as may be required by this Chapter. No candidate or designated treasurer or deputy treasurer shall accept such funds without such information and they shall be responsible under the provisions of this Chapter for any errors and omissions in records or reports for such funds. Any contribution received by a candidate who has appointed a campaign treasurer shall be transferred to the campaign treasurer.

(2) When any person who is not the campaign treasurer or a deputy treasurer of a candidate makes any expenditure for the candidate, he shall transmit directly to the campaign treasurer or a deputy treasurer all information concerning the expenditure required by this

Chapter. The candidate and his campaign treasurer, if any, shall be responsible under the provisions of this Chapter for any errors or omissions in the records or reports of such expenditures.

(3) For purposes of all reports required by this Chapter, all contributions received by or transferred to a campaign treasurer or a deputy treasurer of a candidate and all expenditures made by a campaign treasurer or a deputy treasurer of a candidate or by any other person on behalf of the candidate, shall be considered contributions or expenditures of the candidate.

C. Deputy campaign treasurers of a candidate may exercise any of the powers and duties of a campaign treasurer as set forth in this Chapter when specifically authorized to do so by the campaign treasurer and the candidate.

D. The candidate shall designate one or more national or state banks or state or federally chartered savings and loan associations or savings banks, or state or federally chartered credit unions, as his campaign depositories and may invest in a money market mutual fund and designate such fund as a campaign depository. The candidate, his campaign treasurer, and any deputy treasurers shall deposit any contributions received by them into an account or accounts maintained at such depository or depositories. No expenditure shall be made by any candidate, campaign treasurer, deputy treasurer, or any other person on behalf of the candidate, except by check drawn on such account or accounts, except as specifically provided in Subsection E. Each check drawn on any such account shall be made payable to a specific

person, except a check made payable to petty cash. Each check drawn on such an account shall indicate the objects or services for which such check is drawn and such check shall be maintained as part of the records required by R.S. 18:1495.3. The name and address of each campaign depository so designated shall be filed with the supervisory committee in the first report after such designation. If any additional depositories are designated they shall be reported in the first report following such designation.

E. A candidate may maintain a petty cash fund or funds. A petty cash fund shall be maintained on an imprest system, that is, expenditures may be made in cash from the fund and the fund shall from time to time be restored to its original amount by a transfer of funds from other funds of the candidate of a sum equal to the aggregate of the sums expended from the fund. No expenditure in excess of one hundred dollars shall be made from the petty cash fund and no expenditure shall be made from the petty cash fund for any personal services, except for gratuities paid for the serving of food or drink. No expenditure shall be made from the petty cash fund in violation of R.S. 18:1531. A complete record of petty cash expenditures shall be maintained in accordance with the provisions of R.S. 18:1495.3(D).

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981; Acts 1985, No. 550, §1, eff. July 12, 1985; Acts 1993, No. 199, §1, eff. June 1, 1993; Acts 1997, No. 863, §1.*

**§1495.3. Maintenance of records; valuation of in-kind contributions and expenditures**

A. The candidate and the campaign treasurer, if the candidate does not act as campaign treasurer, shall be responsible for providing and maintaining such records of campaign finances as are necessary to comply with the provisions of this Part, including but not limited to the records specifically required by this Section.

B.(1) Except as otherwise provided in this Section, the campaign treasurer for each candidate shall keep such records of campaign contributions received and accepted by him or a deputy treasurer as shall be necessary to comply with the provisions of this Part, including the names and addresses of all contributors, the date of each contribution, the amount or value of the contribution of whatever value, and a description and valuation of all in-kind contributions.

(2) Payments made to purchase campaign paraphernalia, such as campaign pins, buttons, badges, flags, emblems, hats, shirts, banners, literature, and similar items, other than expenditures made by a candidate for his own paraphernalia, and payments for tickets to testimonials and similar fundraising events are contributions, and records thereof shall be maintained, provided that:

(a) In the case of any single transaction involving the sale of items such as campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar material which is for an amount not in excess of twenty-five dollars and the proceeds of which are received and deposited by a candidate, no record need be kept by the campaign treasurer for such recipient candidate, except

the total amount received and deposited from such sale and the fact that such amount was received from such sale.

(b) No person shall sell or buy campaign paraphernalia in successive single transactions for amounts below those for which specific records are required by this Paragraph as a subterfuge to avoid requirements of this Part that names and addresses of contributors and dates and amounts of contributions be recorded, aggregated, and reported. Such transactions shall be considered single transactions and shall be recorded and reported as provided in this Part. Any person who violates the provisions of this Section shall be subject to the penalties provided in R.S. 18:1505.4, R.S. 18:1505.5, and R.S. 18:1505.6.

(3)(a) Each campaign treasurer for a candidate shall also keep records of the amounts of all expenditures made by the candidate from his own funds.

(b) The campaign treasurer of each candidate shall also keep such records of campaign expenditures made or contracted as shall be necessary to comply with the provisions of this Part, including the name and address of the person or firm from whom goods or services were purchased or contracted, the date, the amount or value and the purpose of the expenditure, a description of the goods or services purchased or contracted, and a description and valuation of all in-kind expenditures.

(4) All transactions involving the sale of tickets to a testimonial or similar fundraising event shall be evidenced by a record of the names and addresses of the

purchasers, the amount of tickets purchased, and the value of the tickets purchased.

C. The valuation of in-kind contributions or expenditures shall be the estimated fair market value thereof at the time received or expended.

D. A record shall be kept of all expenditures made from the petty cash fund for which provision is made in R.S. 18:1495.2, including the name and address of the person or firm from whom goods or services were purchased or contracted, the amount and the purpose of the expenditure, and a description of the goods or services purchased or contracted. In addition, a receipt shall be kept for each such expenditure in any case in which a receipt would normally be provided in the usual course of business.

E. A record shall be kept of each loan made by the candidate to or from any person or political committee, together with the full name and address of the lender, of the recipient of the proceeds of the loan, and of any person who makes any type of security agreement binding himself or his property, directly or indirectly, for the repayment of all or any part of the loan. In addition, a record shall be kept of the repayment of each such loan and of the source of funds expended for repayment.

F. *Repealed by Acts 1993, No. 199, §2, eff. June 1, 1993.*

G. A record shall also be kept of:

(1) Cash investments and income received therefrom.

(2) All debts and obligations.

(3) The amount and date of each anonymous contribution and the date each is transmitted to the state as required by this Chapter.

(4) All other receipts, the name and address of the source, and the date and amount thereof.

(5) All other disbursements, the name and address of the person to whom made and the date and amount thereof.

H. Expenditures made by a public relations firm, an advertising agency, or agent for a candidate, shall be considered expenditures of the candidate, and must be specifically reported as required by this Part. Each such firm, agency, or agent shall timely furnish to such candidate such information relative thereto as may be required for compliance with this Part. Failure by any such firm, agency or agent to timely furnish a candidate such information required for compliance with this Part shall be grounds for a civil action for damages.

I. A campaign treasurer shall preserve records required by this Part for two years after the final report which he is required by this Part to file for the election has been filed, including any supplemental reports required.

J. The accounts and records kept by a campaign treasurer under the provisions of this Part shall be available for inspection or use by the supervisory committee in connection with any investigation pursuant to this Chapter, or by any grand jury or court in connection with any proceeding instituted under the provisions of this Chapter; however, such accounts and records shall be

kept strictly confidential by the supervisory committee and any court, except to the extent any contents thereof may become a public record in any judicial proceeding to enforce the provisions of this Chapter.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981; Acts 1988, No. 994, §1, eff. Jan. 1, 1989; Acts 1993, No. 199, §2, eff. June 1, 1993.*

**§1495.4. Reports required; reporting times and periods**

A. The candidate and his campaign treasurer, if any, shall be responsible for filing a report of all information required in this Section and R.S. 18:1495.5 with the supervisory committee at the times required in this Section. The candidate and his campaign treasurer, if any, shall certify, in each report, that the information contained in the report is true and correct to the best of their knowledge, information and belief, that no expenditures have been made and no contributions have been received that are not reported therein, and that no information required by this Part has been deliberately omitted.

B. A report shall be filed for a candidate for each regularly scheduled election in which the candidate participates according to the following schedule:

(1) Each candidate for major office shall file a report no later than the one hundred eightieth day prior to the primary election, which shall be complete through the one hundred ninetieth day prior to the primary election.

(2) Each candidate for major office shall file a report no later than the ninetieth day prior to the primary

election, which shall be complete through the one hundredth day prior to the primary election.

(3) Each candidate shall file a report no later than the thirtieth day prior to the primary election, which shall be complete through the fortieth day prior to the primary election.

(4) Each candidate shall file a report no later than the tenth day prior to the primary election which shall be complete through the twentieth day prior to the primary election.

(5) Each candidate shall file a report no later than the tenth day prior to the general election which shall be complete through the twentieth day prior to the general election. This shall be the final report for the election for any candidate who does not participate in the general election, unless supplemental reports are required as provided in Subsection D of this Section.

(6) Each candidate shall file a report no later than the fortieth day after the general election which shall be complete through the thirtieth day after the general election. This report shall be the final report for the election for any candidate who participated in the general election, unless supplemental reports are required as provided in Subsection D of this Section.

(7) The final report of a candidate who either withdraws as a candidate or is unopposed for election to the office he seeks shall be the next report due as required in this Subsection as of the date that the candidate withdraws or ascertains that he is unopposed, unless supplemental reports are required as provided in Subsection D

of this Section. The report shall contain a statement that it is the final report and the reasons therefor.

C. During the period beginning at midnight of the twentieth day prior to a primary election and extending through midnight of primary election day, and during the period beginning at midnight of the twentieth day prior to a general election and extending through midnight of general election day, each candidate shall file a report with the supervisory committee of:

(1)(a) The full name and address of each person from whom the candidate has received and accepted a contribution or loan during such period in excess of the following amounts: a candidate for any major office, five hundred dollars; a candidate for district office, two hundred fifty dollars; a candidate for any other office, two hundred fifty dollars.

(b) Such report shall include the amount and date of each such contribution or loan reported, and a brief description and valuation of each in-kind contribution. If a loan is reported, the report shall contain the name and address of the lender, of the recipient of the proceeds of the loan, and of any person who makes any type of security agreement binding himself or his property, directly or indirectly, for the repayment of all or any part of the loan.

(2) Any expenditure in excess of two hundred dollars made to a candidate, committee, or person required to file reports by this Chapter, who makes endorsements, including the full name and address of each person to whom such expenditure is made, the amount, date, and

purpose of each such expenditure, and a brief description and valuation of an in-kind expenditure.

(3) Each report required by this Subsection shall be filed within forty-eight hours after the time the contribution or loan is received or expenditure made. If such time falls other than during regular working hours, the report shall be filed as soon as possible after the opening of the office of the supervisory committee on the next working day after the time at which the report is otherwise due.

D.(1) If the final report of a candidate for an election, as required by Paragraph (5), (6), or (7) of Subsection B above, shows a deficit, the candidate and his treasurer, if any, shall file supplemental reports with the supervisory committee of all information required in R.S. 18:1495.5. Such reports shall be filed annually no later than February fifteenth and shall be complete through the preceding December thirty-first. Such a supplemental report shall be filed each year until a report has been filed which shows no deficit.

(2) "Deficit" for purposes of this Subsection means debts or obligations owed by the candidate which are required to be reported by R.S. 18:1495.5(B)(14).

(3) A report need not be filed under this Subsection if the candidate is not an elected public official and shows a deficit less than two thousand five hundred dollars. However, if the candidate is not an elected public official and his deficit is equal to or greater than two thousand five hundred dollars, the candidate shall file supplemental reports with the supervisory committee of all information required in R.S. 18:1495.5. Such report shall be filed annually no later than February fifteenth and shall be

complete through the preceding December thirty-first. Such report shall be filed each year for five years or until a report has been filed which shows no deficit.

E. A report shall be filed for each candidate, as defined by R.S. 18:1483(3), of all information required in R.S. 18:1495.5 no later than February fifteenth of each year which shall be complete as of the preceding December thirty-first. The annual report required by this Subsection shall not be required:

(1) If under another provision of this Section the candidate has filed another report of the information required by R.S. 18:1495.5 at any time after the preceding December tenth and prior to February fifteenth due date, or

(2) If the candidate files a supplemental report as required by R.S. 18:1495.4(D) and has not otherwise, during the reporting period, become a candidate, as defined in R.S. 18:1483(3), or

(3) If the candidate has received no contributions, made no expenditures, and received or made no loans during the reporting period for such report.

F. The reports required for any regularly scheduled election shall also be filed for any special election to the extent the dates for filing reports occur after the call for the election. The supervisory committee may promulgate rules to effect the provisions of this Subsection. Such rules may waive any report required to be filed within ten days after the call for a special election.

G. The reporting period for all reports of candidates, except the first report for any election, shall be the

period from the time through which the preceding report was complete through the closing date for the particular report. The reporting period for the first report of candidate for any election shall be the period from the time when the candidate becomes a candidate through the closing date for the report. Notwithstanding the foregoing, if a candidate is required to file reports in connection with a previous candidacy, the reporting period for the first report for the election shall be the period from the time through which the latest report is complete through the closing date for the particular report.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981. Amended by Acts 1982, No. 266, §1, eff. July 18, 1982; Acts 1984, No. 492, §1; Acts 1987, No. 757, §1; Acts 1988, No. 994, §1, eff. Jan. 1, 1989; Acts 1990, No. 180, §1, eff. Jan. 1, 1991.*

**§1495.5. Reports; contents**

A. Unless otherwise specifically provided, each report required by this Part shall contain the following information:

(1) The name and address of the candidate for whom the report is filed.

(2) The name and address of the treasurer completing the report.

(3) The office sought.

(4) If the candidate has designated any subsidiary committees, the name of all subsidiary committees for whom the candidate is reporting and the address of such committees, or if a committee has no address, the address of the committee chairman.

B. Each report required to be in conformity with this Section shall contain the following information:

(1) The amount of cash and cash investments on hand at the end of the prior reporting period.

(2) The total of all contributions received and accepted by the candidate during the reporting period.

(3) Cash income from investments received during the reporting period.

(4) Contribution(s) received during the reporting period for which the report is being completed shall be reported, and the same shall be reported irrespective of the amount thereof as follows:

(a) The full name and address of each person who has made one or more contributions to and which have been received and accepted by the candidate during the reporting period; the aggregate amount of such contributions, except in-kind contributions, from each person, and the date and amount of each such contribution; and a brief description of each in-kind contribution from each person, the valuation thereof made by the candidate and the campaign treasurer, and the date(s) of the in-kind contribution.

(b) The aggregate amount of all contributions, other than in-kind contributions, received and accepted during the reporting period.

(c) The aggregate valuation of in-kind contributions received during the reporting period.

(5) The gross proceeds received and accepted by the candidate during the reporting period from the sale of

items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials. Purchases of such campaign items and materials which are made by the same person and which are of such amount as to be reportable, either singly or in the aggregate, under Paragraph (4) hereof, shall be so reported; however, single transactions to purchase such items or materials which are for not in excess of twenty-five dollars must be reported only in the report of gross proceeds and shall not be required to be reported as required in Paragraph (4).

(6) The gross proceeds received and accepted by the candidate during the reporting period from the sale of tickets to testimonials or similar fundraising events. The proceeds of any such sales shall be considered a contribution, and such contributions shall also be reported as provided in Paragraph (4).

(7) Any other cash receipts, not contributions, from any other source not included above during the reporting period, for example, refunds of overpayments and the nature, source, and an explanation thereof.

(8) Total of all receipts for the reporting period.

(9) The date and amount of each loan for campaign purposes made or received by the candidate to or from any person or political committee during the reporting period, together with the full name and address of the lender, of the recipient of the proceeds of the loan, and of any person who makes any type of security agreement binding himself or his property, directly or indirectly, for the repayment of all or any part of the loan.

(10) The total of all loans made and the total of all loans received during the reporting period.

(11) The total of all expenditures made by the candidate during the reporting period.

(12) The full name and address of each person to whom an expenditure has been made by the candidate during the reporting period. The amount, purpose, and date of each such expenditure shall be reported. A brief description of an in-kind expenditure shall be given, as well as the valuation made by the candidate and the campaign treasurer and the date(s) of the expenditure. When multiple expenditures have been made to the same person, during the reporting period, the aggregate amount of such expenditures, other than in-kind expenditures, and the aggregate valuation of in-kind expenditures shall be reported for each such person. The aggregate of all expenditures made during the reporting period, other than in-kind expenditures, and the aggregate valuation of all in-kind expenditures shall also be reported. The aggregate amount expended for each candidate shall also be reported.

(13) The total amount of monetary expenditures made by the candidate from his own funds during each reporting period.

(14) The amount and nature of debts and obligations owed by or to the candidate, during the reporting period, which relate to the conduct of any political campaign, including but not limited to loans required to be reported under Paragraph (9) of this Subsection.

(15) All payments made during the reporting period to repay loans, the amount, date, and source thereof.

(16) *Repealed by Acts 1993, No. 199, §2, eff. June 1, 1993.*

(17) The total amount of expenditures during the reporting period from the petty cash fund.

(18) The date and amount of each anonymous contribution received and the date each was transmitted to the state as required by R.S. 18:1505.2(B) during the reporting period and the total amount of such anonymous contributions received and transmitted during the reporting period.

(19) The amount of cash and cash investments of the candidate on hand at the end of the reporting period.

(20) All other disbursements, not expenditures, made during the reporting period, and the nature, recipient, and an explanation thereof.

(21) The total amount of expenditures during the reporting period made in relation to the publication, distribution, transportation, or transmission of statements relative to candidates or propositions which do not fully disclose the name of the individual or the name of the association, organization, committee, or corporation and the full and correct name and address of its chairman or other chief administrative officer and whether or not such individual, association, organization, committee, or corporation supports or opposes such candidate or proposition.

C. Expenditures made by a public relations firm, an advertising agency, or agent for a candidate shall be

considered expenditures of the candidate and must be reported as required by this Section. Each such firm, agency, or agent which makes any expenditure for any candidate shall timely furnish to such candidate such information relative thereto as may be required for compliance with this Part.

D. The supervisory committee by rule, may require the reporting of totals of any information otherwise required to be reported, including totals of amounts reported in the current report, or in the current report and other previous reports.

E. The reports required in this Part shall be filed on forms provided by the supervisory committee as more specifically provided in R.S. 18:1511.3.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981; Acts 1988, No. 994, §1, eff. Jan. 1, 1989; Acts 1990, No. 180, §2, eff. Jan. 1, 1991; Acts 1990, No. 1088, §§1 and 2, eff. Jan. 1, 1991; Acts 1992, No. 751, §1, eff. July 7, 1992; Acts 1993, No. 199, §2, eff. June 1, 1993; Acts 1995, No. 300, §1, eff. June 15, 1995; Acts 1997, No. 1420, §1, eff. Jan. 1, 1998.*

**§1495.6. Small campaigns; affidavit in lieu of reports**

Any candidate, for a major or district office required by this Chapter to file reports of information as provided in R.S. 18:1495.5, who did not receive a contribution in excess of two hundred dollars and who did not make expenditures totaling in excess of five thousand dollars in the aggregate during the aggregating period, may file an affidavit setting out such facts in lieu of each report

required by R.S. 18:1495.4, but a separate affidavit shall be required in lieu of each such report.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981. Amended by Acts 1982, No. 266, §1, eff. July 18, 1982; Acts 1988, No. 994, §1, eff. Jan. 1, 1989.*

### Part IV. Other Persons Required to Report

### §1501.1. Reports by persons not candidates or committees

Any person, other than a candidate or a political committee, who makes any expenditure or who accepts a contribution, other than to or from a candidate or to or from a political committee, shall file reports of all information required by R.S. 18:1491.7 for such person if either said expenditures or said contributions exceed five hundred dollars in the aggregate during the aggregating period as defined for committees. Such reports shall be filed at the same time and shall contain the same information as reports required of political committees by this Part and shall be certified correct as required by R.S. 18:1491.6(A) by the person filing.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981.*

### Part V. Prohibited Practices and Limitations; Penalties

### §1505.1. Failure to submit report; failure to file report timely or properly

A. Failure to submit the reports required by this Chapter shall constitute a violation of this Chapter. Failure to submit any such report within three days after the

final date for filing shall be presumptive evidence of intent not to file the report.

B. Failure to submit the reports required by this Chapter at the time required shall constitute a violation of this Chapter.

C. Failure to disclose or failure to disclose accurately any information required to be reported by this Chapter shall constitute a violation of this Chapter.

D. Failure to properly submit statements in accordance with R.S. 18:1491.1(E) shall constitute a violation of this Chapter.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981; Acts 1988, No. 994, §2, eff. July 27, 1988.*

**§1505.2. Contributions; expenditures; certain prohibitions and limitations**

A. No person shall give, furnish, or contribute moneys, materials, supplies, or make loans to or in support of a candidate or to any political committee, through or in the name of another, directly or indirectly. This prohibition shall not apply to dues or membership fees of any membership organization or corporation made by its members or stockholders, if such membership organization or corporation is not organized primarily for the purpose of supporting, opposing or otherwise influencing the nomination for election, or election of any person to public office.

B.(1) No candidate, political committee, or other person required to file reports under this Chapter shall make any expenditure from funds the source of which is

anonymous, and any contribution received by a candidate, political committee, or other person required to file reports under this Chapter from an anonymous source and deposited shall be reported as provided in R.S. 18:1491.7(B)(19) and R.S. 18:1495.5(B)(18) and shall escheat to the state and shall be paid over to the state by such candidate, political committee, or other such person.

(2) Any single transaction involving the sale of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials, which transaction is for not in excess of twenty-five dollars and in which transaction the purchaser is not known, shall not be deemed to constitute an anonymous contribution under the provisions of this Subsection.

C.(1) No person shall make a cash contribution to a candidate or a committee and no candidate or committee shall receive cash contributions in excess of one hundred dollars during any calendar year. Any contribution in excess of such one hundred dollar aggregate amount, other than an in-kind contribution, shall be made by an instrument containing the name of the donor and the name of the payee.

(2) Upon receipt of a cash contribution of one hundred dollars or less, the candidate or committee receiving the contribution shall provide to the contributor a receipt for the exact amount of the contribution; such receipt shall contain the name, address, and social security number of the contributor, shall be signed by the contributor, and the candidate or committee receiving the contribution shall retain a copy of the receipt. If the contributor

refuses to furnish his name, address, or social security number or refuses to sign the receipt, the contribution shall be immediately returned to said contributor. If the contributor is unable to write, he shall affix his mark to the receipt, and the person receiving the contribution shall affix the name of the incapacitated person to the receipt, provided he does so in the presence of a witness who shall also sign his name as witness to the mark. The copy of the receipt retained by the candidate or committee provided for in this Subsection shall be available to the supervisory committee for inspection. The supervisory committee shall promulgate rules and regulations relative to the receipt required by this Subsection.

D.(1) No person shall knowingly coerce or attempt to coerce another person to give or withhold a contribution.

(2) No person based on an individual's contribution, promise to make a contribution, or failure to make a contribution shall directly or indirectly affect an individual's employment by means of:

(a) Denial or deprivation or the threat of the denial or deprivation of any employment or position.

(b) Denial or deprivation or the threat of the denial or deprivation of the loss of any compensation, payment, benefit, or other emolument derived from or related to such employment or position.

(c) Discharge, promotion, degradation, or change in any manner in rank or classification, or the threat or promise to do so.

(3)(a) No person based on an individual's contribution, promise to make a contribution, or failure to make any contribution shall directly or indirectly affect an individual by means of:

(i) Denial or deprivation or the threat of the denial or deprivation of membership or participation in any organization.

(ii) Denial or deprivation or the threat of the denial or deprivation of the loss of any compensation, payment, benefit, or other emolument derived from or related to such membership or participation in any organization.

(iii) Discharge, promotion, degradation, or change in any manner in rank, status, or classification in any organization, or the threat or promise to do so.

(b)(i) No organization shall directly or indirectly have as a condition of membership or participation the requirement that a person make a contribution to such organization which will be used by such organization for the purpose of supporting, opposing, or otherwise influencing the nomination or election of any person to public office, for the purpose of supporting or opposing a proposition or question submitted to the voters, or for the purpose of supporting or opposing the recall of a public officer.

(ii) For the purposes of this Subparagraph, "contribution" shall have the same meaning as provided for in R.S. 18:1483(6) and shall also include any dues or membership fees of any organization.

(c) For the purposes of this Paragraph, "organization" shall mean a partnership, association, labor union,

political committee, corporation, or other legal entity, including its subsidiaries.

(4) No political committee, candidate, or other person shall knowingly and willfully make a contribution or expenditure using funds which were obtained through practices prohibited in this Subsection.

(5) Any contribution received by a candidate, political committee, or other person required to file reports under this Chapter which was obtained through practices prohibited in this Subsection shall be reported as provided in R.S. 18:1491.7(B)(21) and 1495.5(B)(20) and shall escheat to the state and shall be paid over to the state by such candidate, political committee, or other such person.

E. No expenditure in excess of one hundred dollars shall be made from a petty cash fund and no expenditure shall be made from a petty cash fund for any personal services, except for gratuities paid for the serving of food or drink. No expenditure shall be made from the petty cash fund in violation of R.S. 18:1531.

F. No profit or nonprofit corporation, labor organization, or trade, business, or professional association shall make any campaign contribution or expenditure unless specifically authorized to do so whether (1) by the vote of the board of directors of the corporation, of the executive board of the labor organization or of the trade, business, or professional association at a regular or special meeting thereof, or (2) by the president, vice president, secretary or treasurer of a corporation or labor organization whom the board has specifically empowered to authorize such contributions or expenditures, or (3) by a vote of the membership of the labor organization. No

profit or nonprofit corporation, labor organization or trade, business, or professional association shall make any contribution or expenditure, other than an in-kind contribution or expenditure, except by check.

G. No committee shall receive contributions or loans or make expenditures or loans, or make or receive a transfer of funds to or from another committee in the aggregate in excess of five hundred dollars during a calendar year until it has filed the annual statement of organization required by R.S. 18:1491.1. The chairman and the treasurer of any committee which violates the provisions of this Subsection shall be subject to the penalties provided in this Part. No candidate shall make a contribution to any committee required to file an annual statement of organization by the provisions of R.S. 18:1491.1 which has not filed such a statement.

H.(1)(a) The following contribution limits are established for contributions made to candidates or the principal campaign committee and any subsidiary committee of a candidate for the following offices:

(i) Major office – five thousand dollars.

(ii) District office – two thousand five hundred dollars.

(iii) Other office – one thousand dollars.

(b) The provisions of this Paragraph shall not apply to contributions made to a candidate or the principal or any subsidiary committee of a candidate by a recognized political party or any committee thereof.

(c) Notwithstanding the provisions of Subparagraph (a), the contribution limit for contributions made to

an unsuccessful major office candidate, or the principal campaign committee and any subsidiary committee of such unsuccessful candidate, who does not participate in the general election and for the time period for which such candidate has a deficit for expenditures made through the day of the primary election, shall be ten thousand dollars.

(2)(a) Notwithstanding the provisions of Paragraph (1), the following contribution limits are established for contributions by political committees supporting or opposing a candidate for the following offices:

(i) Major office – five thousand dollars.

(ii) District office – two thousand five hundred dollars.

(iii) Other office – one thousand dollars.

(b) Notwithstanding the provisions of Paragraph (1) and Subparagraph (2)(a) of this Subsection, the following campaign contribution limits are established for contributions by political committees supporting or opposing a candidate for the following offices, the membership of which political committee exceeds two hundred and fifty members as of the December thirty-first of the preceding calendar year, and additionally provided that at least two hundred and fifty of the members have each contributed at least fifty dollars to the political committee during the preceding one-year period:

(i) Major office – ten thousand dollars.

(ii) District office – five thousand dollars.

(iii) Other office – two thousand dollars.

No contribution in excess of the limits contained in Subparagraph (2)(a) of this Subsection shall be made by any political committee until such membership certification is made on the statement of organization form required by this Chapter and timely submitted to the supervisory committee by the applicable due date. Any political committee certified under this Paragraph shall notify the supported candidate in writing at the time any contribution is made under this Paragraph.

(c) If the contribution is made to a committee which is supporting or opposing candidates for different offices, the highest applicable limit shall apply.

(d) The provisions of this Paragraph shall not apply to recognized political parties and their committees.

(e) Notwithstanding the provisions of Paragraph (1) and Subparagraph (2)(a) of this Subsection, the contributions limit for contributions by political committees to an unsuccessful major office candidate, or the principal campaign committee and subsidiary committee of such unsuccessful candidate, who does not participate in the general election and for the time period for which such candidate has a deficit for expenditures made through the day of the primary election, shall be ten thousand dollars.

(f) Notwithstanding the provisions of Paragraph (1) and Subparagraphs (2)(a) and (b) of this Subsection, the contributions limit for contributions by political committees certified according to the provisions of Subparagraph (2)(b) to an unsuccessful major office candidate, or the principal campaign committee and subsidiary committee of such unsuccessful candidate, who does not participate in the general election and for the time period for which

such candidate has a deficit for expenditures made through the day of the primary election, shall be twenty thousand dollars.

(3)(a) For purposes of this Subsection, a primary election and a general election shall constitute two separate elections. For purposes of this Subsection, for candidates and committees that participate in a general election, the reporting period for the general election shall be deemed to begin the day following the primary election.

(b) No person shall make a loan, transfer of funds, or contribution, including but not limited to funds for any purchase of campaign materials for more than twenty-five dollars, funds for the purchase of testimonial tickets, and any in-kind contribution, in the aggregate for all reporting periods for an election, as defined in this Paragraph, including reporting periods for any supplemental reports required, in excess of the contribution limits established in Paragraphs (1) and (2) of this Subsection, except as otherwise specifically provided in this Subsection.

(c) No candidate including his principal campaign committee and any subsidiary committee thereof, shall accept from the same contributor a loan, transfer of funds, or contribution, including but not limited to funds for any purchase of campaign materials for more than twenty-five dollars, funds for the purchase of testimonial tickets, and any in-kind contribution, in the aggregate for all reporting periods of an election, as defined in this

Paragraph, including reporting periods for any supplemental reports, in excess of the contribution limits established in Paragraph (1) of this Subsection, except as otherwise specifically provided in this Subsection, and except that the provisions of Paragraph (2) shall apply for contributions accepted from a political committee. The provisions of this Subparagraph shall not apply to recognized political parties and their committees.

(d) After January 1, 1989, no person shall make a loan, transfer of funds, or contribution to a candidate including his principal campaign committee with funds loaned to him without disclosing to the candidate or his committee the source of the funds. A candidate or his committee receiving such a loan, transfer of funds, or contribution shall not only report the name of the contributor, but also the source of the funds contributed.

(4) The provisions of this Subsection shall not prohibit a transfer of funds between a candidate or his principal campaign committee and any subsidiary committee thereof, provided that all parties shall comply with applicable reporting requirements.

(5) The provisions of this Subsection shall not apply to any contributions or loans a candidate makes to his own campaign.

(6)(a) For purposes of this Subsection, "loan" shall not include any loan of money by a state bank, a federally chartered depository institution, or a depository institution the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or the Federal Credit Union Administration, any licensed lender under the

Louisiana Consumer Law, or an insurance company, other than any overdraft made with respect to a checking or savings account, made in accordance with applicable law and in the ordinary course of business, but such loan:

(i) Shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors, and such loan by each endorser and guarantor shall be subject to the contribution limits provided in this Subsection;

(ii) Shall be made on a basis which assures repayment, evidenced by a written instrument, and subject to a due date or amortization schedule; and

(iii) Shall bear the usual and customary interest rate of the lending institution.

(7)(a) The total amount of combined contributions for both the primary and general elections, from political committees, which may be accepted by a candidate and his principal and subsidiary campaign committees, shall not exceed the following aggregate amounts:

(i) Major office candidates – fifty thousand dollars.

(ii) District office candidates – thirty-five thousand dollars.

(iii) Other office candidates – ten thousand dollars.

(b) The provisions of this Paragraph shall not apply to contributions made by a recognized political party or any committee thereof.

I.(1) On and after January 1, 1991, contributions received by a candidate or a political committee may be

expended for any lawful purpose, but such funds shall not be used, loaned, or pledged by any person for any personal use unrelated to a political campaign or the holding of a public office or party position; except that excess campaign funds may be returned to contributors on a pro rata basis, given as a charitable contribution as provided in 26 USC 170(c), given to a charitable organization as defined in 26 USC 501(c)(3), expended in support of or in opposition to a proposition, political party, or candidacy of any person, or maintained in a segregated fund for use in future political campaigns or activity related to preparing for future candidacy to elective office. However, the use of campaign funds of a candidate or his principal or subsidiary committees to reimburse a candidate for expenses related to his political campaign or his holding of a public office or party position shall not be considered personal use by the candidate. If a candidate is required by state or federal law to pay taxes on the interest earned by campaign funds of the candidate or any political committee of the candidate, the candidate may use the interest on which such tax is paid for such purpose. A payment from campaign funds shall not be considered as having been spent for personal use when the funds are used to replace articles lost, stolen, or damaged in connection with the campaign.

(2) The provisions of this Subsection shall not apply to campaign funds received prior to July 15, 1988.

J.(1) Any candidate, treasurer, or chairman of a political committee who violates any provision of Subsection H or I of this Section shall be assessed a penalty of not more than five thousand dollars or the amount of the violation, whichever is greater, except that the penalty for

a knowing and willful violation shall not be more than ten thousand dollars or two hundred percent of the violation, whichever is greater. "Knowing and willful", for purposes of this Subsection, means conduct which could have been avoided through the exercise of due diligence. The civil penalties provided for in R.S. 18:1505.5 shall be inapplicable to violations of Subsection H or I. Enforcement of Subsections H and I shall be in the same manner provided for in Part VI of this Chapter.

(2) The supervisory committee shall institute civil proceedings to collect the civil penalties provided for in this Subsection as soon as the committee determines, as a result of its review and investigation of any sworn complaint or other document or information received by the supervisory committee, that a violation of Subsection H or I of this Section has occurred. If the supervisory committee makes a determination of such violation at least ten days prior to the election in which the candidate, treasurer, or chairman of a political committee in apparent violation is participating, the supervisory committee shall institute such civil proceedings at least by the fourth calendar day prior to the election.

K.(1) During any four year calendar period commencing January 1, 1991 and every fourth year thereafter, no person shall contribute more than one hundred thousand dollars to any political committee or any subsidiary committee of such political committee, other than the principal or any subsidiary committee of a candidate. Such limitation on a contribution shall not apply to any contribution from a national political committee to an affiliated regional or state political committee.

(2) The provisions of this Subsection shall not apply to contributions made by a recognized political party or any committee thereof.

L.(1) The legislature recognizes that it is essential to the operation of effective democratic government in this state that citizens have confidence in the electoral process and that elections be conducted so as to prevent influence and the appearance of influence of candidates for public office and of the election process by special interests, particularly by persons substantially interested in the gaming industry in this state.

(2) No person to whom this Subsection is applicable as provided in Paragraph (3) of this Subsection shall make a contribution, loan, or transfer of funds, including but not limited to any in-kind contribution, as defined in this Chapter, to any candidate, any political committee of any such candidate, or to any other political committee which supports or opposes any candidate.

(3) This Subsection shall be applicable to all of the following:

(a)(i) Any person who holds a license or permit as a distributor of gaming devices, who holds a license or permit as a manufacturer of gaming devices, who holds a license or permit as a device service entity, and any person who owns a truck stop or a licensed pari-mutuel or off-track wagering facility which is a licensed device establishment, all pursuant to the Video Draw Poker Devices Control Law.[1]

(ii) Any person who holds a license to conduct gaming activities on a riverboat, who holds a license or permit as a distributor or supplier of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Riverboat Economic Development and Gaming Control Act,[2] and any person who owns a riverboat upon which gaming activities are licensed to be conducted.

(iii) Any person who holds a license or entered into a contract for the conduct of casino gaming operations, who holds a license or permit as a distributor of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Economic Development and Gaming Corporation Act,[3] and any person who owns a casino where such gaming operations are licensed.

(b)(i) Any person who has an interest, directly or indirectly, in any legal entity included in Subparagraph (a) of this Paragraph. "Interest", as used in this Subparagraph, means ownership by an individual or his spouse, either individually or collectively, of an interest which exceeds ten percent of any legal entity. An indirect interest is ownership through any number of layers of legal entities when twenty-five percent or more of each legal entity is owned by the legal entity ownership beneath it.

(ii) Any holding, intermediary, or subsidiary company of any person included in Subparagraph (a) of this

Paragraph and any officer, director, trustee, or partner thereof.

(c) Any officer, director, trustee, partner, or senior management level employee or key employee as defined in R.S. 27:205(19) of any person included in Subparagraph (a) or (b) of this Paragraph.

(d) Any person subject to the provisions of R.S. 27:63(C)(4), 226(C)(4), or 261(D).

(e) The spouse of any person to whom this Subsection is made applicable by this Paragraph.

(4) This Subsection shall not prohibit an expenditure by a candidate for his own campaign or a contribution, loan, or transfer of funds by a candidate to his own political committee.

(5)(a)(i) Any person who makes a contribution, loan, or transfer of funds in violation of this Subsection shall be assessed a civil penalty in the same amounts as provided in Paragraph J(1) of this Section. The penalties provided in R.S. 18:1505.5 shall not be applicable to any violation of this Subsection.

(ii) If a candidate, committee, or person required to file reports is notified by the supervisory committee that a contribution, loan, or transfer of funds to such candidate, committee, or person was made in violation of this Subsection, such contribution, loan, or transfer of funds shall escheat to the state. Any such contribution, loan, or transfer of funds, or an amount equal thereto, shall be paid over to the state by the recipient candidate, committee, or other person required to file reports within ten business days after the recipient candidate, committee, or

person required to file reports is notified by the supervisory committee that the contribution, loan, or transfer of funds was made by a person prohibited by this Subsection from making such contribution, loan, or transfer of funds.

(b) The supervisory committee shall institute civil proceedings to collect the civil penalties provided for in this Subsection as provided in Paragraph J(2) of this Section.

(c) The criminal penalties provided in R.S. 18:1505.6(C) shall be applicable to any violation of this Subsection.

(d)(i) In addition to all other applicable penalties, the violation of this Subsection by any person to whom the Subsection is applicable pursuant to Paragraph (3) of this Subsection shall be reported by the supervisory committee to the gaming division of the office of state police, the Riverboat Gaming Commission and the board of directors of the Louisiana Economic Development and Gaming Corporation.

(ii) Such a violation of this Subsection shall be prohibited conduct under the Louisiana Riverboat Economic Development and Gaming Control Act, the Louisiana Economic Development and Gaming Corporation Act, and the Video Draw Poker Devices Control Law that renders the violator unsuitable to hold the license which made him subject to the provisions of this Subsection.

(6)(a) The gaming enforcement section of the office of state police of the Department of Public Safety and

Corrections, with the technical assistance of the supervisory committee, shall provide written notification of the provisions of this Subsection to each person issued or granted a permit, license, or contract as provided in Paragraph (3)(a)(i) and (ii) of this Subsection.

(b) The Louisiana Economic Development and Gaming Corporation, with the technical assistance of the supervisory committee, shall provide written notification of the provisions of this Subsection to each person issued or granted a permit, license, or contract as provided in Paragraph (3)(a)(iii) of this Subsection.

M.(1) No foreign national shall, directly or through any other person, make any contribution of money or other thing of value, or promise expressly or impliedly, any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; nor shall any person solicit, accept, or receive any such contribution from such foreign national.

(2) As used in this Subsection, "foreign national" means:

(a) A foreign principal such as a government of a foreign country or a foreign political party, except that "foreign national" shall not mean any individual.

(b) A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country, unless authorized and qualified to do business in Louisiana.

(c) An individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence and accorded the privilege of residing permanently in the United States as an immigrant.

(3)(a) Any person who makes a contribution, loan, or transfer of funds in violation of this Subsection shall be subject to the penalities provided in R.S. 18:1505.5 and R.S. 18:1505.6.

(b) If a candidate, committee, or person required to file reports is notified by the supervisory committee that a contribution, loan, or transfer of funds to such candidate, committee, or person was made in violation of this Subsection, such contribution, loan, or transfer of funds shall escheat to the state. Any such contribution, loan, or transfer of funds, or an amount equal thereto, shall be paid over to the state by the recipient candidate, committee, or person required to file reports is notified by the supervisory committee that the contribution, loan, or transfer of funds was made by a person prohibited by this Subsection from making such contribution, loan, or transfer of funds.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981. Amended by Acts 1982, No. 266, §1, eff. July 18, 1982; Acts 1988, No. 994, §1, eff. Jan. 1, 1989; Acts 1989, No. 179, §1, eff. Jan. 1, 1990; Acts 1990, No. 180, §1, eff. Jan. 1, 1991; Acts 1990, No. 997, §1, eff. Jan. 1, 1991; Acts 1992, No. 949, §1, eff. Jan. 1, 1993; Acts 1993, No. 199, §§1 and 2, eff. June 1, 1993; Acts 1996, 1st Ex. Sess., No. 67, §1, eff. July 1, 1996; Acts 1997, No. 542, §1; Acts 1997, No. 1164, §1; Acts 1997, No. 1420, §1, eff. Jan. 1, 1998.*

[1]*R.S. 27:301 et seq.*

[2]*R.S. 27:41 et seq.*

[3]*R.S. 27:201 et seq.*

**§1505.3. Subterfuge to avoid compliance with Chapter**

A. As more specifically provided in R.S. 18:1491.3(D), no committee shall nominally support an additional candidate or candidates for the purpose of avoiding designation as a subsidiary committee and the requirements of this Chapter. The committee chairman of any committee which violates the provisions of said Subsection D shall be subject to the penalties provided in R.S. 18:1505.4, R.S. 18:1505.5, and R.S. 18:1505.6.

B. As more specifically provided in R.S. 18:1491.2(B) no political committee shall dissolve and reorganize under a modified name, charter, or organizational structure as a subterfuge to avoid the reporting and other requirements of this Chapter. The chairman of any committee(s) which violates the provisions of said Subsection B shall be subject to the penalties provided in R.S. 18:1505.4, R.S. 18:1505.5, and R.S. 18:1505.6.

C. As more specifically provided in R.S. 18:1491.5(B)(2)(b) and R.S. 18:1495.3(B)(2)(b), no person shall sell or buy campaign paraphernalia in successive single transactions for amounts below those for which specific records are required as a subterfuge to avoid the requirements of this Chapter. Any person who violates the provisions of said Paragraphs shall be subject to the penalties provided in R.S. 18:1505.4, R.S. 18:1505.5, and R.S. 18:1505.6.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981; Acts 1988, No. 994, §1, eff. Jan. 1, 1989.*

**§1505.4. Civil penalties; failure to file; timely and accurate filing**

A.(1) Any candidate, the treasurer or chairman of a political committee, or any other person required to file any reports under this Chapter, who knowingly fails to file or who knowingly fails to timely file any such reports as are required by this Chapter shall be assessed a civil penalty as provided in R.S. 42:1157 for each day until such report is filed.

(2) The amount of such penalty shall be:

(a) One hundred dollars per day, not to exceed ten thousand dollars, for each candidate for major office and any treasurer or chairman of any political committee designated as a principal campaign committee or subsidiary committee of such a candidate.

(b) Sixty dollars per day, not to exceed ten thousand dollars, for any candidate for district office and any treasurer or chairman of any political committee designated as a principal campaign committee or subsidiary committee of such a candidate.

(c) Forty dollars per day, not to exceed ten thousand dollars, for any candidate for all other offices and any treasurer or chairman of any political committee designated as a principal campaign committee or subsidiary committee of such a candidate.

(d) Forty dollars per day, not to exceed ten thousand dollars, for any person or the treasurer or chairman of any political committee, not supporting or opposing a

candidate, but only supporting or opposing any proposition or question submitted to the voters or any recall of a public officer.

(e) Two hundred dollars per day, not to exceed twenty thousand dollars, for the treasurer or chairman of any political committee supporting or opposing a candidate, other than a candidate's principal or subsidiary campaign committee.

(f) The late filing fees for any report required by R.S. 18:1491.6(C) or R.S. 18:1495.4(C) shall be twice those otherwise applicable as provided in this Section.

(3)(a) If a person, other than a political committee, required to file is supporting or opposing a candidate or candidates, the penalty applicable to such candidate or candidates as provided in Subparagraph (a), (b), or (c) of Paragraph (2) of this Subsection shall apply.

(b) If a person, other than a political committee, required to file is supporting or opposing candidates with different penalty levels, the penalty shall be the highest penalty for any such candidate.

(4)(a) For reports required by this Chapter which are required to be filed between the time a candidate qualifies and election day, in addition to any penalties required by this Section or any other law, the supervisory committee shall impose on any person required to file such a report who has not filed such report by the sixth day after the report is due, after a hearing by the supervisory committee pursuant to the provisions of R.S. 18:1511.4(C), with notice to the party who is the subject of

the hearing, an additional civil penalty not to exceed ten thousand dollars.

(b) For all other reports required by this Chapter, in addition to any penalties required by this Section or any other law, the supervisory committee shall impose on any person required to file such a report who has not filed such report by the eleventh day after the report is due, after a hearing by the supervisory committee pursuant to the provisions of R.S. 18:1511.4(C), with notice to the party who is the subject of the hearing, an additional civil penalty not to exceed ten thousand dollars.

B. Any candidate, the treasurer or chairman of any political committee, or any other person required to file reports under this Chapter who knowingly and willfully fails to disclose, or knowingly and willfully fails to accurately disclose, any information required by this Chapter to be disclosed in the reports required herein, shall be assessed a civil penalty for each day until such information is disclosed by amendment to the appropriate report of such candidate, political committee, or other person. "Knowingly and willfully", for purposes of this Subsection, means conduct which could have been avoided through the exercise of due diligence. Such penalties shall be as provided in Subsection A above.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981. Amended by Acts 1982, No. 266, §1, eff. July 18, 1982; Acts 1988, No. 994, §1, eff. Jan. 1, 1989; Acts 1989, No. 179, §1, eff. Jan. 1, 1990; Acts 1990, No. 180, §1, eff. Jan. 1, 1991; Acts 1995, No. 1046, §1, eff. June 29, 1995; Acts 1996, 1st Ex. Sess., No. 66, §1, eff. Jan. 1, 1997; Acts 1997, No. 352, Sec. 1.*

**§1505.5. Civil penalties; violations of Chapter**

A. Except as provided in R.S. 18:1505.4, any person who knowingly and willfully violates any provision of R.S. 18:1505.2 or R.S. 18:1505.3 or any other provision of this Chapter shall be assessed a civil penalty for each violation. "Knowingly and willfully", for purposes of this Subsection, means conduct which could have been avoided through the exercise of due diligence.

B. The amount of such penalty shall be:

(1) Not in excess of five hundred dollars for each candidate for a major office and any treasurer or chairman of any political committee designated as a principal campaign committee or subsidiary committee of such a candidate.

(2) Not in excess of three hundred dollars for any candidate for district office and any treasurer or chairman of any political committee designated as a principal campaign committee or subsidiary committee of such a candidate.

(3) Not in excess of one hundred dollars for any candidate for all other offices and any treasurer or chairman of any political committee designated as a principal campaign committee or subsidiary committee of such a candidate.

(4) Not in excess of one hundred dollars for any person or any treasurer or chairman of any political committee, not supporting or opposing a candidate, but only supporting or opposing any proposition or question submitted to the voters or any recall of a public officer.

(5) Not in excess of one thousand dollars for the treasurer or chairman of any political committee supporting or opposing a candidate, other than a candidate's principal or subsidiary campaign committee.

C.(1)(a) If a person, other than a political committee, required to file is supporting or opposing a candidate or candidates, the penalty applicable to such candidate or candidates as provided in Paragraph (1), (2), or (3) of Subsection B of this Section shall apply.

(b) If a person, other than a political committee, required to file is supporing or opposing candidates with different penalty levels, the penalty shall be the highest penalty for any such candidates.

(2) Each day of violation, if applicable, shall constitute a separate offense. Maximum civil penalties imposed under this Section shall be as provided in R.S. 18:1505.4(A).

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981. Amended by Acts 1982, No. 266, §1, eff. July 18, 1982; Acts 1995, No. 1046, §1, eff. June 29, 1995; Acts 1997, No. 352, §1.*

**§1505.6. Criminal penalties**

A.(1) It shall be unlawful for any candidate, treasurer, or chairman of a political committee, or any other person required to file reports under this Part to knowingly, wilfully, and fraudulently fail to file or knowingly, wilfully, and fraudulently fail to timely file any such report.

(2) Any candidate, treasurer, or chairman of a political committee, or any other person required to file

reports under this Chapter who knowingly, wilfully, and fraudulently fails to file such report or knowingly, wilfully, and fraudulently fails to file such report timely shall, upon conviction, be sentenced to not more than six months in a parish jail or to pay a fine of not more than five hundred dollars, or both.

B.(1) It shall be unlawful for any candidate, treasurer, or chairman of a political committee, or any other person required to file reports under the Chapter knowingly, wilfully, and fraudulently to fail to disclose, or knowingly, wilfully, and fraudulently to disclose inaccurately, any information required to be disclosed in the reports required by this Chapter.

(2) Any candidate, treasurer, or chairman of a political committee, or any other person required to file such reports who knowingly, wilfully, and fraudulently fails to disclose any such information or who knowingly, wilfully, and fraudulently fails to accurately disclose such information shall, upon conviction, be sentenced to not in excess of six months in the parish jail or to pay a fine of not more than five hundred dollars, or both.

C. Any candidate, chairman of a political committee, treasurer, person required to file reports under this Chapter, or any other person who knowingly, wilfully, and fraudulently violates any provision of R.S. 18:1505.2 or R.S. 18:1505.3, or any other provision of this Chapter shall, upon conviction, be sentenced to not in excess of six months in the parish jail or to pay a fine of not more than five hundred dollars, or both.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981; Acts 1988, No. 994, §1, eff. Jan. 1, 1989.*

## Part VI. Enforcement

### §1511.1. Supervisory Committee on Campaign Finance Disclosure/Board of Ethics; functions; compensation; immunity

A. The Supervisory Committee on Campaign Finance Disclosure is established. The Board of Ethics, as established in R.S. 42:1132, shall function as the supervisory committee to administer and enforce the provisions of this Chapter and the rules, regulations, and orders issued hereunder. The members of the Board of Ethics shall constitute the supervisory committee.

B. The members of the supervisory committee shall be paid the same per diem as members of the legislature for each day of attendance at committee meetings, and shall receive reimbursement for vouchered traveling, lodging, and other expenses at the rate established for state employees.

C. The members of the supervisory committee shall be immune from any civil liability for any official action taken in the exercise of their functions pursuant to or in connection with the provisions of this Chapter, except any wrongful and malicious act or gross negligence.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981. Amended by Acts 1981, No. 59, §1, eff. June 17, 1981.*

### §1511.2. Supervisory Committee; rule-making authority; advisory opinions

A. The supervisory committee may adopt and promulgate rules and regulations in accordance with the Administrative Procedures Act necessary to effectuate the

provisions and purposes of this Chapter. Such rules shall be in conformity with the provisions of this Chapter and may include but shall not be limited to any rule to:

(1) Provide for operations of the committee and for committee investigations and proceedings pursuant to this Chapter.

(2) Clarify a provision of this Chapter.

(3) Define a term used in this Chapter.

(4) Apply a general provision of this Chapter or of a committee rule or regulation to specific circumstances.

(5) Provide for preparation and distribution of forms for all reports required by this Chapter, as provided in R.S. 18:1511.3, and to provide instructions and explanation for the completion of such forms.

B. The supervisory committee may render an advisory opinion concerning the application of a general provision of this Chapter, or a general provision prescribed as a rule or regulation by the committee. The supervisory committee may render an opinion in response to a request by any public official, any candidate for public office, any political committee, or the committee may render an advisory opinion on its own initiative. Such an opinion shall not constitute a rule under the provisions of the Administrative Procedures Act and the supervisory committee shall not be subject to that Act in carrying out the provisions of this Subsection.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981.*

**§1511.3. Filing of reports; forms; notice**

A. All reports required by this Chapter shall be filed with the supervisory committee as otherwise provided in this Chapter on forms provided by the supervisory committee. The supervisory committee shall prepare forms for all reports required by this Chapter in conformity with the requirements of this Chapter and shall cause such forms to be printed and sufficient copies thereof furnished to the clerks of court and in Orleans Parish to the clerk of the criminal district court, who shall make them available to all persons required to file reports under the provisions of this Chapter. All forms shall contain instructions directing the person filing with whom to file reports. It is the intent of the legislature that the supervisory committee shall provide forms in a simple format in conformity with the requirements of this Chapter.

B. The supervisory committee shall prepare and distribute to the general public through the offices of the clerks of court and in Orleans Parish the office of the clerk of the criminal district court, booklets of explanation and instruction concerning the provisions of this Chapter in such a manner as to inform the citizens of this state as to the procedures and requirements of this Chapter. The supervisory committee may publish and distribute additional material to assist persons in complying with the provisions of this Chapter.

C. The supervisory committee shall take all action necessary to receive and file the reports, statements, documents, and papers filed with them under the provisions of this Chapter. The supervisory committee shall make

photostatic copies of all reports filed or forwarded to the committee available to the public for inspection immediately upon receipt thereof.

D. The supervisory committee shall retain all reports for six years from the date of filing.

E. The supervisory committee shall notify each person who has qualified for office the preceding year and whose last filed disclosure report reflects a deficit, each person who filed a supplemental report the preceding year which reflected a deficit, and each declared but unqualified candidate who filed a report the previous year, of the date that the annual report as provided in R.S. 18:1491.6(E) and 18:1495.4(E) is due and of the information required in the report. Each notice shall be mailed at least thirty days prior to the date the report is due; however, failure by the supervisory committee to notify a candidate, committee, or other person as required by this Subsection shall not bar or be a defense to any action brought against a candidate, treasurer or chairman of any committee, or other person by the supervisory committee under the provisions of this Chapter.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981. Amended by Acts 1982, No. 652, §1. Acts 1984, No. 466, §1; Acts 1990, No. 1088, §1, eff. Jan. 1, 1991.*

**§1511.4. Supervisory committee; investigations**

A. The supervisory committee may investigate any apparent or alleged violation of this Chapter. The supervisory committee by a two-thirds vote of its membership may initiate such an investigation when, as a result of its

review of reports, other documents or information, filed under provisions of this Chapter, it determines that there is reason to believe a violation of this Chapter has occurred, and it shall initiate an investigation when it makes such a determination upon receipt of a sworn complaint filed with the supervisory committee by any person who believes a violation of the Chapter has occurred.

B. In any investigation under the authority of this Chapter, the supervisory committee may examine or audit records and reports required to be maintained or filed under the provisions of this Chapter.

C.(1) Pursuant to its authority under this Chapter the supervisory committee shall have the power and authority to hold hearings, to subpoena witnesses, administer oaths, compel the production of books, records, and papers, public and private, require the submission under oath of written reports or answers to questions, and to do all that is necessary to effect the provisions of this Chapter.

(2) Upon motion by an affected party including, but not limited to, a candidate, committee, any member of a committee, a prospective witness or any person whose books, records, papers, or other documents are the subject of any subpoena, and for good cause shown, any district court within the jurisdiction of which any inquiry is being conducted may make any order which justice requires to protect such person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(a) That the inquiry not be had.

(b) That the inquiry may be had only upon specified terms and conditions including a designation of the time and place.

(c) That the inquiry shall be conducted by a method other than selected by the supervisory committee.

(d) That certain matters not be inquired into or that the scope of the inquiry be limited to certain matters.

(e) That the inquiry be conducted with no one present except persons designated by the court.

D. Upon petition by the supervisory committee, any district court within the jurisdiction of which any inquiry is being carried on may, in case of refusal to obey a subpoena or order of the supervisory committee issued pursuant to this Chapter, issue an order requiring compliance. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981. Amended by Acts 1981, No. 59, §1, eff. June 17, 1981; Acts 1996, 1st Ex. Sess., No. 64, §2, eff. Jan. 1, 1997.*

**§1511.5. Procedure for enforcement; civil**

A.(1) When the results of the investigation by the supervisory committee indicate that a violation of this Chapter has occurred which is subject to civil penalties, the supervisory committee is authorized to file civil proceedings to collect the civil penalties provided in R.S. 18:1505.5.

(2) The provisions of this Section shall not apply to any action for the payment of late filing fees for reports or statements due pursuant to R.S. 18:1505.4, which shall be governed by R.S. 42:1157, except that the board may take into consideration the provisions of Subsection B of this Section in its consideration of "good cause" shown for waiver of any late fees, pursuant to R.S. 42:1157.2.

(3) Except as provided in R.S. 18:1511.7, these proceedings shall be filed in the district court of the parish in which the candidate, chairman or treasurer of the political committee, or other person required to file reports, is domiciled. The proceedings shall be by rule to show cause and shall be conducted pursuant to the relevant provisions of the Louisiana Code of Civil Procedure.

B. In determining the amount of the civil penalty to be assessed, the district court shall take into consideration, where applicable, the reason for the failure to file timely, or the reason for failing to disclose required information, or the reason for inaccurately disclosing required information; the nature of the office sought by the candidate, or the nature of the office or offices sought by a candidate supported or opposed, in the case of a political committee or other person; the significance of the information undisclosed or, where appropriate, inaccurately disclosed to the voting public; and whether or not the candidate, chairman or treasurer of the political committee, or other person actually has filed a report or disclosed such information prior to the election or prior to the institution of the rule to show cause.

C. A judgment of a district court assessing such civil penalties may be appealed suspensively to the

appropriate court of appeal according to the provisions of the Louisiana Code of Civil Procedure.

D. A judgment assessing civil penalties shall become executory when all delays for appeal have expired according to the Louisiana Code of Civil Procedure, and may be enforced as any other money judgment; however, the proceeds of such civil penalties shall be paid directly to the treasurer of the state of Louisiana.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981. Amended by Acts 1982, No. 266, §1, eff. July 18, 1982; Acts 1988, No. 994, §1, eff. Jan. 1, 1989; Acts 1996, 1st Ex. Sess., No. 66, §1, eff. Jan. 1, 1997.*

**§1511.6. Procedures for enforcement; criminal**

A. When the results of the supervisory committee's investigation indicate that a knowing, willful, and fraudulent violation of this Chapter has occurred, the supervisory committee shall forward all information concerning the alleged violation to the district attorney of the judicial district in which the alleged violation has occurred who shall review such information and make such investigation and initiate such prosecution as he shall deem necessary; except, if the violation occurred with regard to a campaign for the office of district attorney for the judicial district in which the violation took place, the committee shall forward all information concerning the alleged violation to the attorney general who, for cause, when authorized by the court which would have original jurisdiction and subject to judicial review, shall proceed with such criminal prosecutions as are provided by this Chapter.

B. Only the district attorney or attorney general may initiate criminal actions under the provisions of this Chapter. Initiation of such criminal actions by the district attorney or attorney general shall be on the basis of information forwarded by the supervisory committee to the district attorney or attorney general or on the basis of such other information as may be available to the district attorney or the attorney general. The supervisory committee shall have no authority to initiate prosecution.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981.*

**§1511.7. Venue**

A. Actions or proceedings for violation of R.S. 18:1505.1 shall be brought in the parish of East Baton Rouge.

B. Except as provided in Subsection A, actions or prosecutions for any violation of this Chapter shall be brought in the parish of the domicile of the offender and prosecutions shall be instituted by the district attorney of that parish.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981.*

**§1511.8. Secrecy of proceedings**

A. Each complaint received by the supervisory committee, each review by the committee of reports for compliance with the provisions of this Chapter, and all information forwarded to or gathered by the supervisory committee with regard to such complaints or reviews and all investigation and proceedings of the supervisory committee with regard to the same shall be kept strictly

confidential until such time that action with which the supervisory committee or the district attorney has proceeded, or in the case of possible criminal violations in campaigns for district attorney any action with which the attorney general has proceeded, becomes a public record, the prescriptive period has elapsed, or the matter is otherwise finally disposed of. In no event shall such records, evidence, testimony, notes or other data become public records unless and until civil or criminal charges have been instituted in accordance with this Chapter. This prohibition, however, shall not preclude the supervisory committee from: (a) divulging statistical information concerning complaints, reviews, alleged violations, referrals to district attorneys, and similar matters, or (b) divulging that a review or investigation was made or a complaint received with regard to a person or committee, and, upon investigation, no substantial reason was found to believe that a violation of this Chapter has occurred.

B. The attorney general or district attorney shall, prior to the use of any such accounts or records in any criminal proceeding, file a motion in a court of proper jurisdiction requesting a determination by such court of the relevancy or materiality of such accounts or records to a prosecution for violation of this Chapter. The court shall render such determination at an in camera proceeding which shall be confidential and not open to the public. If the court determines that the aforementioned accounts or records are relevant and material to the prosecution in accordance with this Chapter, then such accounts or records shall cease to be confidential in nature and may be introduced as evidence in a criminal proceeding without further restriction. The proceedings

in connection with this Subsection shall be conducted in accordance with the provisions of the Louisiana Code of Criminal Procedure[1] governing motions to suppress evidence.

C. Prior to the use of any such accounts or records in any civil proceeding, the supervisory committee shall file a motion in a court of proper jurisdiction requesting a determination by such court of the relevancy or materiality of such accounts or records to an action for violation of this Chapter. The court shall render such determination at an in camera proceeding which shall be confidential and not open to the public. If the court determines that the aforementioned accounts or records are relevant and material to an action in accordance with this Chapter, then such accounts or records shall cease to be confidential in nature and may be introduced as evidence in a proceeding without further restriction.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981.*

### §1511.9. Immunity from prosecution; prohibition

No person shall be granted immunity from prosecution for testimony or for providing information in connection with any investigation or proceeding conducted under the provisions of this Chapter.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981.*

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[1] LSA-C.Cr.P. Art. 703.

**§1511.10. False complaints**

Any person who knowingly and willfully files a false complaint with the supervisory committee, any person who knowingly and willfully discloses the contents of any complaint, any person who knowingly and willfully discloses any information forwarded to the appropriate officials with such a complaint, or any person who knowingly and willfully discloses any proceedings of the supervisory committee before any action with which the supervisory committee or district attorney has proceeded or, in the case of criminal actions relating to campaigns for district attorney, any action with which the attorney general has proceeded, becomes a public record, or before the prescriptive period has elapsed or the matter is otherwise finally disposed of, shall be guilty of a misdemeanor and shall be fined not in excess of five hundred dollars, or imprisoned for not in excess of six months, or both. The supervisory committee, district attorney or the attorney general investigating any complaint filed with the supervisory committee or any matter under their review or investigation under the provisions of this Chapter may concurrently investigate such complaint with a view to determining if there has been any violation of this Chapter, or if the complainant has knowingly and willfully filed a false complaint.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981.*

**§1511.11. Precedence of actions; limitation of actions**

A. Any action brought under the provisions of this Chapter shall be advanced on the docket of the district court in which filed, and shall take precedence over and

be considered in advance of all other actions other than actions brought under this Chapter.

B. Actions for violation of this Chapter must be commenced before three years have elapsed from the date of the violation or, if the violation is contained in a report, before one year has elapsed from filing of the relevant report.

*Acts 1980, No. 786, §1, eff. Jan. 1, 1981; Acts 1997, No. 286, §1.*

### §1511.12. Legislative intent

In amending and reenacting this Chapter in 1980 and subsequently, it is and was the intent of the legislature that the provisions of R.S. 18:1491.6(D) and R.S. 18:1495.4(D) are remedial and supplemental in nature and, therefore, shall apply retroactively to candidates and committees which were covered by the deficit reporting provisions of this Chapter before and after such amendments.

*Added by Acts 1982, No. 266, §1, eff. July 18, 1982.*

## Part VII. Election Day Expenditures

### §1531. Transportation of voters

A. No person or political committee shall accept or agree to accept, either directly or indirectly, from a candidate, a political committee, or a person required to file reports pursuant to R.S. 18:1501.1, or from a person on behalf of a candidate, a political committee, or a person so required to file reports, anything of economic value,

including any reimbursement of costs, for the purpose of conveying an elector or causing an elector to be conveyed in a motor vehicle to a polling place for the purpose of voting in an election or to any place where absentee voting is being conducted for the purpose of voting absentee, or for driving or being in charge of any motor vehicle being so used.

B. No candidate, political committee, or person required to file reports pursuant to R.S. 18:1501.1, and no person on behalf of a candidate, a political committee, or a person so required to file reports, shall pay, or agree or offer to pay, anything of economic value, including any reimbursement of costs, to any person or political committee for the purpose of conveying an elector or causing an elector to be conveyed in a motor vehicle to a polling place for the purpose of voting in an election or to any place where absentee voting is being conducted for the purpose of voting absentee, or for driving or being in charge of a motor vehicle being so used.

C. Whoever violates the provisions of this Section shall be assessed a civil fine of not more than two thousand five hundred dollars. On a second violation, or any succeeding violation, the penalty shall be a civil fine of not more than five thousand dollars. The provisions of R.S. 18:1505.6 shall not apply to violations of this Section.

D.(1) The provisions of this Section shall not be applicable to any person who gratuitously transports voters to the polls on election day or who gratuitously transports voters to vote absentee.

(2) The provisions of this Section shall not prohibit paying or offering or agreeing to pay any bona fide bus,

taxi, or transportation service, which holds a license or permit duly issued by the appropriate governmental entity and which regularly does business in the area, to convey an elector to vote or vote absentee, nor shall this Section prohibit any such bus, taxi, or transportation service from accepting or agreeing to accept such a payment.

*Added by Acts 1981, No. 716, §1, eff. July 23, 1981; Acts 1993, No. 199, §1, eff. June 1, 1993.*

**§1532. Disclosure of expenditures for election day**

A. *Repealed by Acts 1990, No. 180, §2, effective January 1, 1991.*

B. In addition to all other reports required by this Chapter, not later than ten days after a primary election and not later than ten days after a general election, each candidate, each political committee, and each person required to file reports pursuant to this Chapter shall file a report with the supervisory committee, on such form as the committee shall provide, which shall include:

(1) The total amount of expenditures the candidate, committee, or person required to report has made for each category of expenditures listed below for services performed or advertising broadcast or published on election day:

(a) Television advertising.

(b) Radio advertising.

(c) Newspaper advertising.

(d) Services by election day workers paid by the candidate, committee, or other person required to report.

(e) Contributions or expenditures to organizations for election day activities or services in support of a candidate or candidates or in opposition to a candidate or candidates.

(2) The name, address, and social security number of each individual to whom a monetary expenditure was made by the candidate, committee, or person required to file, for services performed on election day.

(3) The name, address, and social security number of each individual to whom a monetary expenditure was made by an organization, to whom the candidate, committee, or person has made a contribution or expenditure for purposes of the support of the organization, for services performed on election day and the name and address of the organization. Such information shall be provided to the candidate, committee, or person required to report under this Section by the organization to whom the candidate, committee, or person made a contribution or expenditure for purposes of the support of the organization.

(4) The name and address of any person, as defined in R.S. 18:1483, to whom the candidate, committee, or person required to report made an expenditure directly or indirectly for services performed or advertising broadcast or published on election day, except as reported pursuant to Paragraphs (2) and (3).

(5) The amount paid to each individual listed pursuant to Paragraphs (2), (3), and (4) and the purpose of the payment.

*Acts 1988, No. 994, §1, eff. Jan. 1, 1989; Acts 1990, No. 180, §2, eff. Jan. 1, 1991.*

## Title 24

## PART I. LEGISLATIVE AUDITOR

### § 511. Qualification; term; oath; bond; vacancies; authority to administer oaths and take testimony

A. The legislative auditor shall be a duly qualified elector and a competent accountant, and shall serve at the pleasure of the legislature.

B. The legislative auditor shall take an oath of office and give bond with good and solvent surety in the sum of fifty thousand dollars in favor of the president of the Senate and the speaker of the House of Representatives, jointly, and conditioned upon the faithful performance of the duties of his office. This bond shall be filed in the office of the secretary of state within thirty days after the issuance of his commission by the governor.

C. Any vacancy in the office of the legislative auditor shall be filled on a temporary basis with the concurrence of the president of the Senate, the speaker of the House of Representatives, and the chairman of the Legislative Audit Advisory Council, or any two of them, until such time as the vacancy is filled by the legislature.

D. The legislative auditor is authorized to administer oaths and take the testimony of those sworn.

Amended by Acts 1991, No. 610, § 1, eff. Dec. 31, 1991.

**§ 512. Salary and expenses**

The salaries of the legislative auditor and the legislative actuary shall be fixed by the Legislative Audit Advisory Council and, together with all other expenses and salaries of his office, shall be paid out of funds appropriated by the legislature for that purpose.

Amended by Acts 1991, No. 610, § 1, eff. Dec. 31, 1991.

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**§ 513. Powers and duties of legislative auditor; audit reports as public records; assistance and opinions of attorney general; frequency of audits; subpoena power**

A. (1)(a) Subject to Paragraph (3) of this Subsection, the legislative auditor shall have authority to compile financial statements and to examine, audit, or review the books and accounts of the state treasurer, all public boards, commissions, agencies, departments, political subdivisions of the state, public officials and employees, public retirement systems enumerated in R.S. 11:173(A), municipalities, and all other public or quasi public agencies or bodies, hereinafter collectively referred to as the "auditee". The scope of the examinations may include financial accountability, legal compliance and evaluations of the economy, efficiency, and effectiveness of the auditee's programs or any combination of the foregoing. In addition to the authority granted above, the legislative auditor shall have access to and be permitted to examine

all papers, books, accounts, records, files, instruments, documents, films, tapes, and any other forms of recordation, including but not limited to computers and recording devices, of all auditees. This access shall not be prohibited by Paragraph (3) of this Subsection.

(b) For the sole purpose of this Subsection, a quasi public agency or body is defined as:

(i) An organization, either not for profit or for profit, created by the state of Louisiana or any political subdivision or agency thereof, any special district or authority, or unit of local government to perform a public purpose.

(ii) An organization, either not for profit or for profit, that is a component unit of a governmental reporting entity, as defined under generally accepted accounting principles.

(iii) An organization, either not for profit or for profit, created to perform a public purpose and having one or more of the following characteristics:

(aa) The governing body is elected by the general public.

(bb) A majority of the governing body is appointed by or authorized to be appointed by a governmental entity or individual governmental official as a part of his official duties.

(cc) The entity is the recipient of the proceeds of an ad valorem tax or general sales tax levied specifically for its operations.

(dd) The entity is able to directly issue debt, the interest on which is exempt from federal taxation.

(ee) The entity can be dissolved unilaterally by a governmental entity and its net assets assumed without compensation by that governmental entity.

(iv) Any not-for-profit organization that receives and/or expends in excess of twenty-five thousand dollars in local and/or state assistance in any fiscal year. Assistance shall include grants, loans, transfers of property, awards, and direct appropriations of state and/or local public funds. Assistance shall not include guarantees, membership dues, vendor contracts for goods and services related to administrative support for a local or state assistance program, assistance to private or parochial schools, assistance to private colleges and universities, or benefits to individuals.

(2) The financial statements of individual state agencies, departments, boards, and commissions that are included within the state's Comprehensive Annual Financial Report shall be audited by the legislative auditor, but may be audited by a licensed certified public accountant pursuant to the provisions of Subsection A of this Section.

(3) The financial statements of the offices of the independently elected public local officials, including judges, sheriffs, clerks of court, assessors, and district attorneys, all parish governing authorities and all districts, boards, and commissions created by parish governing authorities either independently or in conjunction with other units of government, school boards, indigent defender boards, municipalities, and all boards and commissions created by municipalities, either independently

or in conjunction with other units of government, city courts, quasi public agencies, housing authorities, mortgage authorities, or other political subdivisions of the state not included within the state's Comprehensive Annual Financial Reports, hereinafter collectively referred to as "local auditee", shall be audited or reviewed by licensed certified public accountants subject to Paragraphs (5) and (6) of this Subsection, but may be audited by the legislative auditor pursuant to Paragraph (4) of this Subsection. Any person authorized to conduct an audit of a governmental entity pursuant to R.S. 37:77, shall be permitted to continue auditing that governmental entity subject to the approval of the legislative auditor provided for in Paragraphs (5) and (6) of this Subsection.

(4) Paragraph (3) of this Subsection and Subsection B notwithstanding, the legislative auditor may audit or investigate a local auditee only in those instances when:

(a) The local auditee has failed after thirty days written notice from the legislative auditor to comply with the provisions of this Section relating to timely audits.

(b) The Legislative Audit Advisory Council and the legislative auditor have determined that the local auditee is unable to pay for an audit by a licensed certified public accountant.

(c) The local auditee exhibits a record of egregious control deficiencies and failures to comply with laws and regulations.

(d) The legislative auditor has received complaints of illegal or irregular acts with respect to the local auditee.

(e) The local auditee, after requesting proposals for audit services, receives less than three proposals from licensed certified public accountants or the local auditee receives three or more proposals and the local auditee rejects all proposals for cause, including but not limited to excessive cost.

(f) In the opinion of the legislative auditor and the Legislative Audit Advisory Council the best interest of the state of Louisiana would be served by his audit of the local auditee. Any local auditee selected for audit under the provisions of Subparagraph (c) of this Paragraph shall have the right of appeal to the Legislative Audit Advisory Council. Furthermore, the legislative auditor shall ensure that under the provisions of Subparagraph (c) of this Paragraph audit services are not duplicated.

(5)(a) In lieu of examinations of the records and accounts of any office subject to audit or review by the legislative auditor, the legislative auditor may, at his discretion, accept an audit or review report prepared by a licensed certified public accountant, provided that such audit or review is performed in accordance with generally accepted governmental auditing standards and the Louisiana Governmental Audit Guide, which is to be jointly published by the legislative auditor and the Society of Louisiana Certified Public Accountant's Governmental Accounting and Auditing Committee, and further provided that the legislative auditor has approved the engagement letter in accordance with this Section. The

Louisiana Governmental Audit Guide is a standard for audits and reviews of auditees within Louisiana and shall be produced by the society and the legislative auditor, with input from the Louisiana Municipal Association, the Louisiana Police Jury Association, the Louisiana School Board Association, and any other interested parties. Such audits shall be completed within six months of the close of the entity's fiscal year. Reviews shall be conducted in accordance with the authoritative pronouncements issued by the American Institute of Certified Public Accountants and guidance provided in the Louisiana Governmental Audit Guide. For the limited purpose of providing the audits and reviews as provided in this Subsection, the certified public accountant shall have the access and assistance privileges afforded the legislative auditor in R.S. 24:513(E) and (H). However, the certified public accountant shall comply with any and all restrictions imposed by law on documents, data, or information deemed confidential by law and furnished to the certified public accountant during the course of the audit or review.

(b) It is the intent of the legislature that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Section.

(6) The legislative auditor shall have the authority to prescribe the terms and conditions of any such audit or review conducted by a licensed certified public accountant and shall be authorized to approve said terms and conditions prior to its commencement and to require the

office subject to audit to present said terms and conditions to him for approval. It is the joint responsibility of the office subject to audit or review and the certified public accountant to submit the engagement agreement to the legislative auditor for approval prior to the commencement of the audit. The legislative auditor shall also have access to the working papers of the accountant during the examination and subsequent to its termination.

(7) In order to fulfill the requirements imposed upon any public or quasi-public agency or body or political subdivision of the state by the provisions of this Subsection, any such body shall have the authority to contract for such professional services, without public bid, as are reasonably necessary.

B. The accounts and records of each sheriff, in his function as ex officio tax collector, shall be audited in accordance with the provisions of this section not less than once in every year. Upon request, the tax collector shall provide the legislative auditor with a sworn statement of the amounts of cash on hand and taxes collected for the current year, with an itemized statement of all taxes assessed and uncollected. The statement shall indicate the reason for his failure to collect. Parish governing authorities and the governing authorities of other tax recipient bodies shall notify the legislative auditor, in writing, whenever any sheriff is delinquent in his settlements. All clerks of court and other public officers shall furnish certified copies of any documents or papers in their possession to the legislative auditor whenever he shall request the same, and these certified copies shall be furnished without charge.

C. (1) The legislative auditor shall have authority to evaluate on a continuing basis all aspects of any state, municipal, or parochial retirement system, funded in whole or in part out of public funds, as to its actuarial soundness. The legislative auditor shall make periodic detailed reports, both to the legislature and the governor, specifically setting forth his findings as to the actuarial soundness of such retirement systems. In conducting such evaluations, the legislative auditor shall have complete access to all books and accounts of said retirement systems.

(2) This provision shall in no way be deemed to preclude the authority of any retirement system funded in whole or in part out of public funds to hire an actuary. However, any actuary employed by the legislature or legislative auditor shall be prohibited from serving as, or employing or contracting with any other actuary who is serving as, an actuary for any public retirement system within the state of Louisiana, with respect to such public retirement system, unless such service, employment, or contract is approved by the Legislative Audit Advisory Council as being in the best interest of the state of Louisiana.

D. In addition, the legislative auditor shall perform the following duties and functions:

(1) He shall, not later than the first day of each regular session of the legislature, prepare and submit to the governor and to the legislature his report on the financial statements of the state of Louisiana, together with such comments on internal control structure and

compliance with laws and regulations that are appropriate. Supplemental statements shall be submitted at such other times as may be necessary to show probable changes.

(2) He shall provide actuarial notes on proposed legislation as required by Section 521 of this Chapter.

(3) He shall employ such personnel as may be necessary to perform the duties and functions imposed herein, and may employ such professional and technical personnel as may be necessary in the unclassified service, subject to the other provisions of this Section.

(4) He shall conduct performance audits, program evaluations, and other studies as are needed to enable the legislature and its committees to evaluate the efficiency, effectiveness, and operation of state programs and activities.

(5) Notwithstanding any other provisions of law to the contrary, including R.S. 6:103(F), when the commissioner of financial institutions, or an authorized employee thereof, has informed the legislative auditor pursuant to R.S. 6:103(B)(6) of a failure by a financial institution to furnish adequate security for public funds deposited with it when such security is required by law, regulation, or by contract, the legislative auditor is authorized to notify a "state depositing authority," as defined in R.S. 49:319, or a "local depositing authority," as defined in R.S. 39:1211, of such failure. A copy of the notice shall be forwarded by the legislative auditor to the financial institution which is the subject of such notice.

E. In the performance of his duties as herein stated, the legislative auditor, or any member of his staff designated by him, shall have the power to inspect and to make copies of any books, records, instruments, documents, files, films, tapes, and other forms of recordation, including but not limited to computer and recording devices, of the auditee. He may call upon the auditee and any of its officials and staff for assistance, and advice, and such assistance shall be given through the assignment of personnel or in such other manner as necessity requires.

F. The audit reports issued by the legislative auditor or accepted by the legislative auditor pursuant to this Section or R.S. 46:1064(B), shall be subject to the laws providing for inspection of public records and shall be available in the office of the legislative auditor three days after the date of issuance of the reports as provided by R.S. 44:6. However, this Subsection shall not apply to any documents, data, or information furnished the legislative auditor which are deemed confidential by law.

G. All auditees and their officials and staff are hereby directed to assist the legislative auditor in his work and to furnish such information, reports, aid, services, and assistance as may be requested, all without any cost or charge. It shall be the duty of the attorney general and the local district attorney to give assistance to the legislative auditor. The attorney general shall render his opinion in writing on any subject requested by the legislative auditor.

H. The authority granted to the legislative auditor in this Section to examine, audit, inspect or copy shall

extend to all books, accounts, papers, documents, records, files, instruments, films, tapes, and any other forms of recordation, including but not limited to computer and recording devices, whether confidential or otherwise. However, the legislative auditor shall comply with any and all restrictions imposed by law on documents, data, or information deemed confidential by law and furnished to the legislative auditor.

I. (1) The audits enumerated in Subsection A of this Section shall be conducted frequently enough to control and safeguard the assets of the auditee as follows:

(a) The financial statements of the state of Louisiana shall be audited annually. The financial statements of individual state agencies, departments, boards, and commissions shall be audited at least once every two years, to include the transactions of both years. However, the financial statements of individual state agencies, departments, boards, and commissions that compose a material part of the state's financial statements, as determined by the legislative auditor, shall be subjected to audit tests annually.

(b) The accounts and financial statements of parish tax collectors shall be audited annually.

(c) The financial statements of local auditees, as defined in Paragraph A(3) of this Section, shall be audited as follows:

(i)(aa) Any local auditee that receives fifty thousand dollars or less in revenues and other sources in any one fiscal year shall not be required to have an audit, but

must file a certification with the legislative auditor indicating that it received fifty thousand dollars or less in funds for the fiscal year. The auditee shall annually file with the legislative auditor sworn financial statements as required by R.S. 24:514. However, the legislative auditor, at his discretion, may require said local auditee to have an audit of its books and accounts.

(bb) However, any volunteer fire department that receives fifty thousand dollars or less in funds in any one fiscal year shall not be required to have an audit, but shall file a certification with the legislative auditor signed by the president of the volunteer fire department indicating that the department received fifty thousand dollars or less for the fiscal year and shall annually file with the legislative auditor sworn financial statements as required by R.S. 24:514. The legislative auditor, at his discretion, may require any such volunteer fire department to have an audit of its books and accounts.

(ii) Notwithstanding the provisions of R.S. 24:514, any local auditee that receives more than fifty thousand dollars in revenues and other sources in any one fiscal year, but less than three hundred fifty thousand dollars, shall cause to be conducted an annual compilation of its financial statements, to be accompanied by an attestation report on the entity's compliance with laws and regulations. Such attestation matters shall be in accordance with the Louisiana Governmental Audit Guide. However, the legislative auditor, at his discretion, may require said local auditee to have an audit of its books and accounts.

(iii) Any local auditee that receives three hundred fifty thousand dollars or more in revenues and other

sources in any one fiscal year, but less than three million five hundred thousand dollars, shall be audited once every two years, said audit to include the transactions of both years.

(iv) Any local auditee that receives three million five hundred thousand dollars or more in revenues and other sources in any one fiscal year shall be audited annually.

(d) The provisions of Subparagraph (1)(c) of this Subsection shall apply to the state or local assistance received and/or expended by a quasi public agency or body when such funds are not commingled with other funds of the quasi public agency or body. However, if the state or local assistance received and/or expended by a quasi public agency or body is commingled with other funds of the quasi public agency or body then such state or local assistance and other funds of the quasi public agency or body shall be audited pursuant to Subparagraph (1)(c) of this Subsection.

(2) The provisions of this Section shall be deemed minimum audit requirements and nothing within this Section shall prohibit a political subdivision from providing for more frequent audits, subject to the approval of the engagement agreement by the legislative auditor.

J. Whoever violates the provisions of this Section shall be fined not more than one thousand dollars and shall be deemed guilty of malfeasance and gross misconduct in office, and shall be subject to removal.

K. Notwithstanding the provisions of Subsection B of this Section or of any other provision of law to the

contrary, a sheriff and ex-officio tax collector shall have the option of having the annual and biennial audits of his office as provided in Subparagraphs I(1)(b) and (c) of this Section conducted either by the legislative auditor or by a private certified public accountant pursuant to the provisions of this Section.

L. (1) In the performance of his duties the legislative auditor, or any member of his staff designated by him, may compel the production of public and private books, documents, records, papers, films, tapes, and electronic data processing media. For such purpose the legislative auditor and the chairman of the Legislative Audit Advisory Council may jointly issue a subpoena for the production of documentary evidence to compel the production of any books, documents, records, papers, films, tapes, and electronic data processing media regarding any transaction involving a governmental entity. The subpoena may be served by registered or certified mail, return receipt requested, to the addressee's business address, or by representatives appointed by the legislative auditor, or shall be directed for service to the sheriff of the parish where the addressee resides or is found.

(2) If a person refuses to obey a subpoena issued under any Section of this Part, a judicial district court, upon joint application by the legislative auditor and the chairman of the Legislative Audit Advisory Council, may issue to the person an order requiring him to appear before the court to show cause why he should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished as a contempt of court.

Amended by Acts 1991, No. 610, § 1, eff. Dec. 31, 1991; Acts 1992, No. 585, § 1; Acts 1993, No. 183, § 1; Acts 1995, No. 467, § 1, eff. Jan. 1, 1996; Acts 1995, No. 686, § 1, eff. June 21, 1994; Acts 1995, No. 877, § 1, eff. Jan. 1, 1996.

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**§ 513.1. Audit of accounts of Department of Revenue; confidentiality of information; unauthorized disclosure**

A. The legislative auditor, or any member of his staff designated by him, shall have authority to examine and audit the books and accounts of the Department of Revenue, and shall have access to all papers, books, records, files, instruments, documents, including tax returns and tax return information, films, tapes, and any other forms of recordation, including but not limited to computers and recording devices which the legislative auditor, in his discretion, deems necessary for the purpose of making the audit, if such disclosure of information is not in contravention of any provision of federal law prohibiting the dissemination thereof.

B. The scope of the examination may include financial accountability, legal compliance, or evaluations of the economy, efficiency, and effectiveness of the Department of Revenue, or any combination of the foregoing.

C. In the performance of the audit and examination of the Department of Revenue, the legislative auditor, or any member of his staff designated by him, may inspect and make copies of any papers, books, records, files,

instruments, documents, including tax returns and tax return information, films, tapes, and any other forms of recordation, including but not limited to computers and recording devices of the department. He may call upon the department for assistance and advice, and such assistance and advice shall be given through the assignment of personnel or in such other manner as necessity requires.

D. Any tax information, or copies thereof, furnished by the Department of Revenue to the legislative auditor, or any member of his staff designated by him, shall be considered confidential and privileged by the legislative auditor and members of his staff. Any person divulging such information contrary to the provisions of R.S. 47:1508 shall be punished by imprisonment for not more than two years, or fined not more than ten thousand dollars, or both.

Amended by Acts 1991, No. 610, § 1, eff. Dec. 31, 1991.

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**§ 513.2. Information system on boards, commissions, and like entities**

A. The legislative auditor shall establish and maintain a comprehensive computerized information system on boards, commissions, and like entities. The system shall include those state boards, commissions, and like entities as provided in Subsection D of this Section and those local boards, commissions, and like entities which are specifically created by law.

B. The information system shall include financial and personnel data for boards, commissions, and like entities, except for such entities which are budget units of the state as defined by R.S. 39:2 or which are included within such budget units. These data shall include but not be limited to the following:

(1) Financial data for the last completed fiscal year, estimates covering the entire current fiscal year, and projections for the ensuing fiscal year, as follows:

(a) Fund balances of the licensing agency at the beginning and conclusion of each fiscal year.

(b) Revenues and receipts, itemized by source.

(c) Expenditures itemized by source of funds and expenditure category by each major function, program, or service.

(d) Number of classified, unclassified, and part-time employees.

(2) Clearly defined indicators of the quantity and quality of performance.

(3) Participation of agency personnel and board members in state employee benefit programs, including insurance and retirement.

C. The information system shall include a comprehensive listing of all boards, commissions, and like entities which shall include but not be limited to the following:

(1) Name of the board, commission, or like entity.

(2) Organizational placement under Title 36 of the Louisiana Revised Statutes of 1950.

(3) Statutory or other legal authority relative to the entity.

D. The information system shall provide for designation as a state board only entities created by law or executive order which are made a part of the executive branch of state government by the provisions of Title 36 of the Louisiana Revised Statutes of 1950, or which are placed in an executive branch department or in the office of the governor or lieutenant governor by law or executive order, or which exercise any authority or perform any function of the executive branch of state government. The system shall also clearly designate entities created as political subdivisions of the state or of local government.

E. The auditor shall annually submit to the legislature a report including summary information on the financial and personnel information contained in the information system and shall report findings and recommendations resulting from any analysis of that information deemed necessary by the legislative auditor.

F. All agencies, boards, commissions, and departments of the state and its political subdivisions are hereby directed to furnish such information, reports, aid, services, and assistance as may be requested by the legislative auditor in the performance of his responsibilities as set forth in this Section, all without any cost or charge.

Added by Acts 1989, No. 353, § 1, eff. June 28, 1989. Amended by Acts 1991, No. 610, § 1, eff. Dec. 31, 1991.

**§ 513.3. Audit reports; gaming regulator audits; review of gaming facilities**

A. The legislature hereby recognizes that the legislative auditor is required by generally accepted auditing standards to determine whether gaming industry regulators are effectively performing their oversight function in the regulation of gaming operators in the state of Louisiana.

B. (1) In order to fulfill the duties imposed upon him by generally accepted auditing standards, the legislative auditor is authorized to accompany and/or observe any gaming industry regulators in the performance of their official duties in any gaming facility located within the state of Louisiana. However, the legislative auditor shall strive to use the least intrusive method of observation which will allow him to perform his duties hereunder. The legislative auditor may have access to the gaming facility to observe the gaming operations pursuant to this Subsection without the accompaniment of a gaming regulator only with the express written consent of the gaming operator unless such written consent is subsequently rescinded in writing by the gaming operator.

(2) "Gaming industry regulators", as used herein, shall mean the Department of Revenue, the Department of Public Safety and Corrections, the Riverboat Gaming Commission, the Louisiana Economic Development and Gaming Corporation, any successor boards, commissions or departments which are formed to regulate the gaming industry in Louisiana and their representatives.

C. In addition and in furtherance of the legislative auditor's responsibility shown in Subsections A and B of this Section, provided the legislative auditor previously has obtained the written consent of the gaming operator and unless such written consent is subsequently rescinded in writing by the gaming operator, the legislative auditor may examine, audit, inspect, copy and/or review the books and records relating to revenues, including but not limited to accounts, papers, documents, files, instruments, films, tapes and any other forms of recordation relating to revenues, whether confidential or otherwise, of a gaming operator of a facility.

D. All files, records, reports, and other information pertaining to gaming matters in the possession of any gaming industry regulator shall be made available to the legislative auditor as necessary for the performance of his duties hereunder.

E. The legislative auditor may enter into restricted use and information sharing agreements with gaming industry regulators and law enforcement agencies. Information received pursuant to such agreements shall not be disclosed without the permission of the providing agency.

F. (1) The legislative auditor shall adopt a code of ethics for himself and his employees.

(2) Ethics codes adopted by the legislative auditor shall include but not be limited to the Code of Governmental Ethics and shall contain the following:

(a) The legislative auditor and his employees shall not be permitted to engage in gaming activities in an

establishment licensed by a gaming industry regulator, except in the course of the person's duties.

(b) The legislative auditor and his employees shall not solicit or accept employment from an establishment licensed by a gaming industry regulator for a period of two years after termination of employment with the office of the legislative auditor.

(c) The legislative auditor and his employees shall not have a direct or indirect interest in an establishment licensed by a gaming industry regulator, or a holding, intermediary, or subsidiary company of such establishment during the employment of the legislative auditor and his employees.

(3) The legislative auditor, his employees, and any spouse or minor child of the legislative auditor and his employees shall not pay, lend, or contribute anything of value to a political candidate, political organization, political party, or political action committee.

(4) The legislative auditor and his employees shall not acquire a direct or indirect interest in or be employed by an establishment licensed by a gaming industry regulator for a period of two years after termination of employment with the office of the legislative auditor.

G. In performing the functions of this Section, the legislative auditor shall comply with any and all restrictions imposed by law and by any rule, regulation or contractual agreement on documents, data, or information deemed confidential by law and by any rule, regulation, or contractual agreement.

Added by Acts 1995, No. 1315, § 1, eff. July 1, 1995.

**§ 514. Sworn annual financial statements; actuarial valuations; examinations**

A. The auditees and local auditees referred to in R.S. 24:513 shall furnish to the legislative auditor, annually, sworn annual financial statements.

B. (1) The annual sworn financial statements required under this Section shall be prepared in accordance with generally accepted accounting principles and include such disclosures required by state and federal regulations, except as provided by Paragraphs (2) and (3) of Subsection B of this Section. The statements required by this Section shall include a recital that the financial statements present fairly, in all material respects, the financial condition and results of operations of the auditee; that the entity has maintained a system of internal control structure sufficient to safeguard assets and comply with laws and regulations; and that the entity has complied with all laws and regulations, or shall acknowledge exceptions thereto.

(2) Any local auditee which, under Louisiana law, can not issue bonds may issue annual financial statements on the cash basis of accounting, provided that such statements describe all outstanding obligations and fixed assets of the local auditee, amounts due the local entities and such disclosures required by state and federal regulations.

(3) The annual financial statements of the state of Louisiana shall be prepared in accordance with generally accepted accounting principles. The financial statements of individual state agencies, exclusive of the judiciary, shall be prepared in accordance with procedures and

formats prescribed by the division of administration. The financial statements of the judiciary shall be prepared in accordance with procedures and formats prescribed by the Judiciary Budgetary Control Council, provided such procedures and formats provide for the compilation of the state's annual financial statements.

C. No officer shall destroy any voucher or other paper belonging to his office before it has been examined by the legislative auditor or certified public accountant authorized to perform an audit in lieu of the legislative auditor.

D. In addition to furnishing the annual sworn statements under Subsection A of this Section, all state, municipal, and parochial retirement systems funded in whole or part out of public funds shall furnish to the legislative auditor, annually, actuarial valuations. Such actuarial valuations shall be submitted to the legislative auditor between the first and one hundred and twentieth day following the close of the fiscal year of the retirement system.

E. The annual sworn financial statements required under Subsection A of this Section shall be furnished to the legislative auditor between the first and ninetieth day following the close of the accounting year, provided that individual state agencies shall file annual financial statements within the time frame prescribed by the commissioner of administration.

F. The annual sworn financial statements required under the provisions of this Section shall not be filed by the reporting agency if the agency has filed an approved engagement agreement with the legislative auditor

within sixty days of the close of the fiscal year to conduct an audit of its funds by a certified public accountant, the legislative auditor has approved the terms and conditions of the engagement agreement as authorized by R.S. 24:513, and the engagement agreement includes the period of the required report; provided however, when such agreement is for multiple fiscal years, financial statements must be submitted for the interim fiscal year.

G. The legislative auditor shall use the annual sworn statements and actuarial valuations provided for herein in connection with the audits, reviews, and valuations which he is authorized to conduct as provided by R.S. 24:513 and 513.1. If he finds that any irregularities exist, he shall call them to the attention of those responsible therefor. In case of any irregularities or defalcations or failure of any officer or employee to comply with the provisions of this Section, the legislative auditor shall notify the Legislative Audit Advisory Council.

H. Whenever any person required to make the sworn statement or actuarial valuation fails to do so or renders an inaccurate, incomplete, or otherwise improper statement or valuation, the legislative auditor shall have the power to petition directly or through his authorized representative to the courts for writs of mandamus to compel the filing of the sworn financial statements or actuarial valuations containing complete and accurate information. Any failure to obey a writ of mandamus issued by the court may be punished by the court as a contempt thereof.

Amended by Acts 1991, No. 610, § 1, eff. Dec. 31, 1991.

**§ 515. Accounts of offices, boards, commissions, agencies, and departments; records of general fixed assets**

A. All auditees shall designate or provide an office for their secretary, treasurer, or principal finance officer where their books and records must be kept. All accounts of such public funds shall be kept in the form prescribed by the legislative auditor and he shall have the authority to install a system of accounting in any office which he is authorized to examine and audit. Any failure of any auditee to furnish the legislative auditor with any information requested shall be immediately reported to the Legislative Audit Advisory Council which shall take such action as it may deem proper.

B. (1) The head of every auditee subject to examination and audit under the provisions of R.S. 24:513(A) shall maintain records of all land, buildings, improvements other than buildings, equipment, and any other general fixed assets which were purchased or otherwise acquired, and for which such entity is accountable. The records shall include information as to the date of purchase of such property or equipment, the initial cost, the disposition, if any, the purpose of such disposition, and the recipient of the property or equipment disposed of. When ascertaining the exact cost, exact selling price, or any other relevant information on property or equipment obtained prior to January 1, 1980, creates a hardship on the auditee, such agency may provide estimates of the information. The records shall be made available to the legislative auditor or, when the audit is conducted by a certified public accountant, the certified public accountant, at the time of examination and audit of the auditee,

or any such time as the legislative auditor or certified public accountant requests the copies[1] of such records be furnished. The records shall not include office supplies. Said records shall be used as one of the criteria in determining the rating which the auditee will be given.

(2) The records required to be maintained by Paragraph (1) hereof for state government shall be prepared on forms and conform to procedures developed and established by the division of administration in accordance with the Administrative Procedure Act.

Amended by Acts 1991, No. 610, § 1, eff. Dec. 31, 1991.

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**§ 516. Reports**

A. (1) The legislative auditor shall file copies of all audit reports released by his office with the governor, the attorney general, and the office investigated. For purposes of public inspection, the legislative auditor shall file copies of all audit reports prepared by his office or accepted by the legislative auditor pursuant to R.S. 24:513(A) and R.S. 46:1064(B) with the clerk of court of the parish within which the office investigated is domiciled, the parishes of East Baton Rouge and Orleans excepted.

(2) The period during which the clerk of court is required, under the provisions of this Subsection, to make

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[1] In subsec. B, "copies" is as appears in the enrolled bill.

an audit report of the legislative auditor available for public inspection shall begin on the first regular scheduled work day after expiration of three days from the time the report is filed in the office of the clerk of court and shall extend for a period of not less than one year. All such reports shall call attention to those matters required by governmental auditing standards, including reportable conditions, failure to comply with laws and regulations, and such additional matters that may be included in a management letter. Reports shall make specific recommendations for future avoidance together with management's response. If the report discloses any alleged criminal acts by any public officer or employee, the legislative auditor shall furnish an additional copy of the report to the district attorney of the parish where the offense was committed.

B. Parish governing authorities and the governing authorities of other tax recipient bodies shall notify the legislative auditor, in writing, whenever any sheriff is delinquent in his settlements.

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**§ 517.1. Reimbursement for local audits**

A. The legislative auditor, except for services provided under R.S. 24:513(A)(4)(d), shall be reimbursed for actual expenses incurred in connection with any local government audit, audit of any public retirement system enumerated in R.S. 42:698.2(A), or audit of any municipality, public or quasi-public agency performed under the

provisions of LSA-R.S. 24:513(A)(4). The Legislative Audit Advisory Council may authorize lower rates based on economic hardships to particular local auditees.

B. (1) The reimbursement provided in Subsection A of this Section shall be payable to the legislative auditor by the local government, including municipalities, public and quasi-public agencies, or public retirement system auditees based upon billing procedures established by the legislative auditor. If the auditee has failed to remit payment in full for the audit services rendered within a period of ninety days from the initial billing date, the legislative auditor shall submit written notice to the auditee that payment in full will be withheld from monies accruing to the auditee within thirty days of the notice.

(2) Upon its request, the auditee shall be entitled to a hearing before the Legislative Audit Advisory Council concerning the reimbursement and withholding of said monies. If such hearing is requested and the committee determines that the legislative auditor shall be reimbursed by the auditee, or if no such hearing is requested, and the legislative auditor certifies in writing to the Department of Treasury or any other state agency who is holding monies accruing to the auditee that:

(a) The legislative auditor has provided local services consistent with this Section, and

(b) The auditee has failed to remit payment in full for the audit services rendered within a period of ninety days from the initial billing date, the treasurer or state agency shall, from the monies accruing to the local entity, forward to the legislative auditor all or that portion of

those monies necessary to reimburse the legislative auditor for the total amount of audit costs billed.

C to E. Repealed by Acts 1991, No. 610, § 2, eff. Dec. 31, 1991.

F. (1) Notwithstanding any provision of law to the contrary, a judicial district indigent defender board which receives annual funds of less than fifty thousand dollars and is audited by the legislative auditor in accordance with this Chapter shall not be required to reimburse the legislative auditor for expenses incurred in connection with the audit nor shall the legislative auditor charge a fee in connection with said audit.

(2) An indigent defender board exempted by this Subsection from reimbursing the legislative auditor for audit costs shall be exempted from paying the costs of any such audit conducted after January 1, 1990.

Amended by Acts 1990, No. 297, §§ 1, 2, eff. July 5, 1990; Acts 1991, No. 610, § 1, eff. Dec. 31, 1991.

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**§ 517.2. Repealed by Acts 1991, No. 610, § 2, eff. Dec. 31, 1991**

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**§ 517.3. Reimbursement for state audits**

A. The legislative auditor shall be reimbursed for actual expenses incurred in connection with any financial and compliance audit or financial and compliance related

examination he performs of a state entity's federal programs or of a state entity whose revenues consist primarily of self-generated fees and revenues. The legislative auditor shall contract with a licensed certified public accountant for each state audit he does not possess the resources to audit, the cost of said audit to be paid by the legislative auditor to the extent that funds are appropriated by the legislature. Should funds not be made available for the audit, the legislative auditor shall bill the audited state agency and pay the contract auditor.

B. to D. Repealed by Acts 1991, No. 610, § 2, eff. Dec. 31, 1991.

**§ 518. Penalties**

A. (1) Any auditee, local auditee, or public officer, employee, or other person of said auditee:

(a) Who neglects, fails or refuses, to furnish the legislative auditor with such papers, accounts, books, documents, films, tapes, and other forms of recordation, including but not limited to computer and recording devices, whether confidential or otherwise, that he has the right to inspect and examine, or

(b) Who shall deny him access to the office, or to papers, accounts, books, documents, films, tapes, and other forms of recordation, including but not limited to computer and recording devices, whether confidential or otherwise, that he has the right to inspect or examine, or

(c) Who refuses, fails, or neglects to transmit to the legislative auditor reports, statements

of accounts or other documents upon request as provided by law or

(d) Who, otherwise in any manner, obstructs or impedes the legislative auditor in making the examination authorized by law.

shall be fined not less than five hundred dollars, nor more than five thousand dollars, or imprisoned for not less than ten days, nor more than six months, or both.

(2) Any officer of an auditee or local auditee who violates any of the provisions of this Chapter shall, in addition to the above fines and penalties, be deemed guilty of malfeasance and gross misconduct in office, and shall be subject to removal.

B. Any director, officer, employee or agent of a corporation, cooperative association or partnership, or any other person:

(1) Who neglects, fails or refuses to furnish in a timely fashion to the auditee or local auditee or its representative such papers, accounts, books, documents, films, tapes, and other forms of recordation, including but not limited to computer and recording devices, whether confidential or otherwise, that the auditee has the right to inspect and examine, or

(2) Who shall deny the auditee or local auditee or its representative access to the office, or to papers, accounts, books, documents, films, tapes, and other forms of recordation, including but not limited to computer and recording devices, whether confidential or otherwise, that the auditee has the right to inspect or examine, or

(3) Who refuses, fails, or neglects to transmit to the auditee or local auditee reports, statements of accounts or other documents upon request as provided by law or who obstructs or impedes the auditee in making the examination authorized by law shall be fined not less than five hundred dollars nor more than five thousand dollars, or imprisoned for not less than ten days nor more than six months, or both.

C. (1) Each elected and appointed official, employee, and agent of the auditee or local auditee shall comply with any and all restrictions imposed by law on documents, data, or information deemed confidential by law and furnished to the auditee pursuant to Subsection B of this Section.

(2) Any person who discloses such confidential documents, data, or information shall be fined not less than five hundred dollars nor more than five thousand dollars and, if a public employee, shall also be subject to dismissal from public employment.

Amended by Acts 1991, No. 610, § 1, eff. Dec. 31, 1991.

**§ 519. Report of remedial actions**

A. In any case in which an audit report issued by the legislative auditor, or accepted by the legislative auditor pursuant to R.S. 24:513 cites reportable conditions or includes a management letter or other irregularities, as required by R.S. 24:516 to be reported, the head of the auditee to which the audit report pertained shall, within thirty days of receipt of said report, advise the Legislative Audit Advisory Council in writing of any remedial

actions taken on the matters cited in the report or remedial action to be taken in the future.

B. When such audit report discloses illegalities or fraud and a copy of said report as provided by law has been sent to the district attorney of proper jurisdiction, the said district attorney shall within thirty days advise the chairman of the council as to action he has taken or proposes to take in connection with the illegality or fraud cited in said audit report. When future action is to be taken by the district attorney, the council shall set a date for receipt of further advice in the matter. When such advice is not forthcoming from the head of the agency audited or from the district attorney, as the case may be, or when it is evident that suitable action has not been taken, the council shall report the matter to the legislature at its next regular session for whatever action the legislature deems advisable under the circumstances.

Amended by Acts 1991, No. 610, § 1, eff. Dec. 31, 1991.

**§ 521. Actuarial notes**

A. Every bill, joint resolution, and simple or concurrent resolution introduced in the legislature proposing any change in the law relative to any state, municipal or parochial retirement system, funded in whole or in part out of public funds shall have attached to it at the time of its consideration by any committee of either house of the legislature a brief explanatory statement or note which shall include a reliable estimate of the financial and actuarial effect of the proposed change in any such retirement system. The statement or note shall be known as an actuarial note. Such note shall be attached to the original

of each proposed bill or resolution which is reported favorably by any committee of either house of the legislature, but shall be separate therefrom, shall be clearly designated as an actuarial note and shall not constitute a part of the law or other provisions or expression of legislative intent proposed by the bill or resolution.

B. The author of each bill or resolution shall present a copy of the bill or resolution, with his request for an actuarial note, to the legislative auditor who shall have the duty to prepare the note as promptly as possible. Actuarial notes shall be prepared in the order of receipt of request for such notes.

C. The note shall be factual in nature, as brief and concise as may be, and shall, if possible, provide a reliable estimate in dollars. In addition, it shall include both the immediate effect and, if determinable or reasonably foreseeable, the long range fiscal and actuarial effect of the measure. If, after careful investigation, it is determined that no dollar estimate is possible, the note shall set forth the reasons why no dollar estimate can be given. No comment or opinion shall be included in the actuarial note with regard to the merit, or lack thereof, of the measure for which the note is prepared. However, technical or mechanical defects may be noted.

D. At any time any committee of either house reports any legislative instrument, to which an actuarial note was attached at the time of committee consideration, with any amendment of such nature as would substantially affect the costs to or the revenues of any retirement system as stated in the actuarial note attached to the measure at the time of such consideration, it shall be the

responsibility of the chairman of the committee reporting such instrument to obtain from the legislative auditor an actuarial note of the fiscal and actuarial effect of the change proposed by the amendment reported. Such actuarial note shall be attached to the report of the committee on the measure as a supplement thereto, but shall not be printed in the journal. At any time a floor amendment is offered in either house to any bill or resolution, to which an actuarial note was attached at the time of committee consideration or committee report, which amendment would substantially affect the cost to or the revenues of any retirement system as stated in the most recent actuarial note and the member proposing such amendment does not present to the house an actuarial note prepared by the legislative auditor as to the fiscal and actuarial effect of his proposed amendment, any member may offer a motion that the proposed amendment be withdrawn. If the motion is adopted by the favorable vote of a majority of the quorum present the amendment shall be deemed to be withdrawn, though the amendment may be proposed again at any time it would otherwise be in order, provided that the required actuarial note is presented at that time.

E. The subject matter of bills or resolutions submitted to the legislative auditor for preparation of the required information for said actuarial notes shall be kept in strict confidence and no information relating thereto or relating to the fiscal or actuarial effect of any such measure shall be divulged by the legislative auditor or any of his employees prior to its consideration, by any committee of either house of the legislature, except to the author or authors of the bill or resolution listed thereon at the

time of receipt thereof by the legislative auditor. However, copies of the notes may be furnished to the staff and to the chairman of the retirement committee of the house of origin of the bills or resolutions, all of whom shall be subject to the provisions of this Paragraph.

Amended by Acts 1991, No. 610, § 1, eff. Dec. 31, 1991.

**§ 522. Louisiana Performance Audit Program**

A. The Louisiana Performance Audit Program is hereby established. This program is created to identify and plan for the state's long-term needs in addition to finding solutions to present fiscal problems.

B. For purposes of this program, "state agency" means any state agency, office, department, board, commission, institution, division, committee, program, or legal entity, heretofore existing or hereafter created within the legislative, executive, or judicial branch of state government, including an institution of higher education, but does not include any agency, governing body, or officer of any local government or political subdivision of the state.

C. In accordance with this program and the powers and duties otherwise provided by law, including approval of the Legislative Audit Advisory Council, the legislative auditor shall:

(1) Evaluate the basic assumptions underlying any and all state agencies and the programs and services provided by the state to assist the legislature in identifying those that are vital to the best interests of the people

of the state of Louisiana and those that no longer meet that goal.

(2) Evaluate the programs, policies, services, and activities administered by the agencies of state government and identify overlapping functions, outmoded programs or methodologies, areas needing improvement, and/or programs amenable to privatization.

(3) Evaluate the impact, effectiveness, and cost-effectiveness of all state agencies and of their programs, services, and activities.

(4) Evaluate the efficiency with which state agencies operate the programs under their jurisdictions and fulfill their duties.

(5) Evaluate methods agencies use to maximize the amount of federal and private funds received by the state for its programs in order to ensure that the people of Louisiana receive a fair share of the taxes which they pay to the United States government and to provide for the effective efficient use of private resources.

(6) Evaluate the management of state debt.

(7) Evaluate the assessment, collection, and application of user fees.

(8) Make recommendations each year relative to the programs and services the various state agencies provide as well as recommendations for elimination of or reduction in funding for agencies, programs, or services based on the results of performance audits. Such recommendations shall be submitted in a report to each member of the legislature no later than February fifteenth each year.

(9) Make annual recommendations to the appropriate oversight committees of the legislature and the Legislative Audit Advisory Council as to amendments to statutory and constitutional provisions that will improve the efficiency of state government, including, if appropriate, recommendations concerning the reorganization or consolidation of state agencies.

(10) Evaluate the methods used by each agency in the estimation, calculation, and reporting of its performance, and evaluate the actual outcomes of each agency's performance with regard to its performance indicators as defined in R.S. 39:2.

D. (1) All state agencies and their officials and staff shall assist the legislative auditor in his work and furnish such information, reports, aid, services, and assistance as he may request, all without any cost or charge of any nature to the legislative auditor.

(2) All state agencies shall develop specific goals and objectives for each of their programs to include measures of performance. They shall report on program goals and objectives in developing annual budgets and shall submit such information to the legislature as a part of the appropriations process.

E. The legislative auditor may request assistance, including the use of personnel from the state treasurer, the commissioner of administration, and administrators of the various state agencies which may be necessary to enable him to accomplish the purposes of this Section.

F. The legislative auditor shall complete such audits which have statewide and/or program implications and

include them as part of the legislative auditor's audit of the state of Louisiana's 1996 financial statements.

G. The annual audits of the legislative branch of state government shall include performance audit issues consistent with the legislative auditor's audits of the executive and judicial branches of state government.

H. State employee involvement shall be encouraged by the State Employees Incentive Award Committee through the incentive award program authorized by R.S. 39:366.1 et seq.

I. The legislative auditor shall establish a schedule for execution of performance audits which shall ensure the completion and publishing of the audits of no less than two different agencies from at least two different executive departments in each year, with such audits published no later than thirty days prior to commencement of the regular session of the legislature. Such schedule shall be constructed to ensure that within the five-year period beginning with the 1997-1998 Fiscal Year at least one performance audit shall be completed and published for each of the twenty departments of the executive branch of state government.

Added by Acts 1995, No. 1100, § 1, eff. June 29, 1995. Amended by Acts 1997, No. 1465, § 1, eff. July 15, 1997.

**§ 2213. Purchase and sale of land by public bodies; disclosure of names of appointed or elected officials with pecuniary interest prior to transaction; voting by members of body with pecuniary interest prohibited**

A. Each public entity shall enter in the official record of the proceedings of such entity at least seven days prior to the purchase or sale of any land by it, the names of any person known by such entity to be:

(1) An elected official of the state or any of its political subdivisions and having a pecuniary interest in the purchase or sale of such land; or

(2) An appointed official or employee of the public entity making the purchase or sale and having a pecuniary interest in the purchase or sale of the land.

B. For purposes of this Section, "pecuniary interest" shall mean any interest in the consideration paid for the land. Provided, however, ownership of five percent or less of the capital stock of a partnership or limited partnership, shall not constitute "pecuniary interest" for purposes of this Section when the owner of such shares does not participate in any activity pertaining to the purchase or sale of the land.

C. Every elected or appointed official, as defined in this Section, having a pecuniary interest in the purchase or sale of such land and knowing that he has a pecuniary interest shall notify the participating public entity concerning the extent of his pecuniary interest at least five days before the date of the purchase or sale.

D. Any elected or appointed official, as defined in this Section, who has the power to vote on the decision whether to make such a purchase or sale of land, and who has a pecuniary interest in the purchase or sale of such land shall be prohibited from voting on the transaction. Voting on the sale or purchase of property by an elected or appointed official in violation of this Subsection shall constitute malfeasance in office.

E. For the purposes of this Section, the purchase of land through expropriation proceeding shall not be construed as a purchase on which an elected or appointed official is prohibited from voting, if his only pecuniary interest is in the title to the property.

F. For purposes of this Section, the purchase or sale of land shall include, but not be limited to, the purchase or sale of mineral rights, timber rights, and the letting, or acquiring of a leasehold interest, or any other interest in land.

G. The provisions of this Section shall not be construed in any way as affecting the provisions of R.S. 42:1111 et seq. relative to governmental ethics, or R.S. 47:2178 et seq. relative to sales of tax adjudicated lands; nor shall the provisions of this Section, or the failure to comply with them, be construed as affecting the merchantability of the title of the subject land.

Acts 1977, No. 103, § 1.

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## Title 42

### § 61. Declaration of policy

A. It is essential to the maintenance of a democratic society that public officials and employees perform the public business in a manner which serves to promote and maintain in the general citizenry a high level of confidence and trust in public officials, public employees, and governmental decisions. The attainment of this end is impaired when a public official or employee holds two or more public offices or public jobs which by their particular nature conflict with the duties and interests of each other. The attainment of a high level of confidence and trust by the general citizenry in public officials, employees, and governmental decisions is further impaired by the excessive accumulation of governmental power which may result from public officials or employees holding two or more public offices or public jobs.

B. It is the purpose of this Part to implement a policy which will serve to maintain a high level of trust and confidence by the general citizenry in public officials, employees, and governmental decisions of the government of this state and of its political subdivisions by defining and regulating dual employment and by defining, regulating, and prohibiting dual officeholding.

Added by Acts 1979, No. 700, § 1.

**§ 62. Definitions**

As used in this Part the following words and phrases shall have the following meanings ascribed for each unless the context clearly indicates otherwise:

(1) "Elective office" means any position which is established or authorized by the constitution or laws of this state or by the charter or ordinances of any political subdivision thereof, which is not a political party office, and which is filled by vote of the citizens of this state or of a political subdivision thereof.

(2) "Appointive office" means any office in any branch of government or other position on an agency, board, or commission or any executive office of any agency, board, commission, or department which is specifically established or specifically authorized by the constitution or laws of this state or by the charter or ordinances of any political subdivision thereof and which is filled by appointment or election by an elected or appointed public official or by a governmental body composed of such officials of this state or of a political subdivision thereof.

(3) "Employment" means any job compensated on a salary or per diem basis, other than an elective or appointive office, in which a person is an employee of the state government or of a political subdivision thereof.

(4) "Full time" means the period of time which a person normally works or is expected to work in an appointive office or employment and which is at least seven hours per day of work and at least thirty-five hours per week of work.

(5) "Part time" means the period of time which a person normally works or is expected to work in an appointive office or employment which is less than the number of hours of work defined in this Section as full time.

(6) The executive branch of state government includes the following named officers and all other officers, agents, employees, or other persons holding or exercising an employment with them, namely, the governor; lieutenant governor; secretary of state; attorney general; treasurer; commission of agriculture; commissioner of insurance; superintendent of education; commissioner of elections; members of the State Civil Service Commission, the Public Service Commission, the Board of Regents, the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, the Board of Supervisors of Southern University and Agricultural and Mechanical College, the State Board of Elementary and Secondary Education, the Board of Trustees for State Colleges and Universities, and the State Bond Commission. The executive branch shall also include the officers, members, agents, and employees of any department, office, agency, instrumentality, board, commission, or other entity created by the constitution or by law whose functions are not primarily legislative, judicial, or local in nature or operation.

(7) The legislative branch of state government includes the members of the Senate and the House of Representatives, the officers, agents, and employees of the legislature of either house or of a committee of either house thereof, the legislative auditor, legislative fiscal officer, or any other agency created by law which is

primarily legislative in nature, and any other legislative officer, office, or instrumentality of the state.

(8) The judicial branch of state government includes all judges, employees, and agents of the supreme court, the judicial administrator, courts of appeal, district courts, including the civil and criminal district courts of Orleans Parish, parish courts, city courts, juvenile and family courts, and any other judicial offices and instrumentalities of the state, but does not include judges or employees of courts not enumerated in this Paragraph.

(9) "Political subdivision" means a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions. In addition for the purposes of this Part, mayor's courts, justice of the peace courts, district attorneys, sheriffs, clerks of court, coroners, tax assessors, registrars of voters, and all other elected parochial officials shall be separate political subdivisions.

Added by Acts 1979, No. 700, § 1. Amended by Acts 1988, No. 58, § 3.

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**§ 63. Prohibitions**

A. (1) Except as otherwise provided in this Subsection, no person holding an elective office, appointive office, or employment in any of the branches of state government or of a political subdivision thereof shall at

the same time hold another elective office, appointive office, or employment in the government of a foreign country, in the government of the United States, or in the government of another state.

(2) A person holding employment in the government of the United States and at the same time holding an appointive office in a political subdivision of the state shall not be in violation of this Subsection, unless the particular nature of his employment in combination with the duties and interests of his appointive office in a political subdivision of this state is otherwise prohibited by this Part or is found to be adverse to the public interest as set forth in R.S. 42:61.

(3) A person holding employment in the government of the United States and at the same time holding an elective office on a parish or city school board shall not be in violation of this Subsection, unless the particular nature of his employment in combination with the duties and interests of his elective office on a parish or city school board is otherwise prohibited by this Part or is found to be adverse to the public interest as set forth in R.S. 42:61.

B. Except as otherwise provided by the Louisiana constitution, no person holding office or employment in one branch of the state government shall at the same time hold another office or employment in any other branch of the state government.

C. No person holding an elective office in the government of this state shall at the same time hold another

elective office, a full-time appointive office, or employment in the government of this state or in the government of a political subdivision thereof.

D. No person holding an elective office in a political subdivision of this state shall at the same time hold another elective office or full-time appointive office in the government of this state or in the government of a political subdivision thereof. No such person shall hold at the same time employment in the government of this state, or in the same political subdivision in which he holds an elective office. In addition no sheriff, assessor, or clerk of court shall hold any office or employment under a parish governing authority or school board, nor shall any member of any parish governing authority or school board hold any office or employment with any sheriff, assessor, or clerk of court.

E. No person holding a full-time appointive office or full-time employment in the government of this state or of a political subdivision thereof shall at the same time hold another full-time appointive office or full-time employment in the government of the state of Louisiana, in the government of a political subdivision thereof, or in a combination of these.

F. No person holding an elective office in any branch of state government shall contract, on a full-time basis, to provide health or health-related services for any agency of state government. No person engaged in a contract on a full-time basis, with any agency of state government to provide health or health-related services

shall hold an elective office in any branch of state government.

Amended by Acts 1995, No. 673, § 1.

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**§ 64. Incompatible offices**

A. In addition to the prohibitions otherwise provided in this Part, no other offices or employments shall be held by the same person in combination if any of the following conditions are found to pertain and these prohibitions shall exist whether or not the person affected by the prohibition exercises power in conjunction with other officers:

(1) The incumbent of one of the offices, whether or not in conjunction with fellow officers, or employment has the power to appoint or remove the incumbent of the other, except that local governmental subdivisions may appoint members of the governing body to boards and commissions created by them and over which they exercise general powers as provided in Article VI, Section 15 of the Constitution of Louisiana. A board or commission so created may elect officers from its own membership, and if a joint commission of two parishes, except a joint commission that has as its function the operation and maintenance of a causeway and its related roadways, may also appoint a member of one of such parish's governing body to be its general superintendent.

(2) The incumbent of one office, whether or not in conjunction with fellow officers, or employment receives the oath and/or bond of the incumbent of the other.

(3) The incumbent of one office, whether or not in conjunction with fellow officers, or employment is charged by law with instituting actions for penalties against the incumbent of the other office or employment.

(4) The incumbent of one office, whether or not in conjunction with fellow officers, or employment is required by law to execute orders and follow directions given by the incumbent of the other office or employment.

(5) One office, whether or not in conjunction with fellow officers, or employment is charged with auditing the accounts of or approving the budget of the other position.

(6) Funds received by one office or employment are deposited with or turned over to the other office or position.

B. A joint commission that has as its function the operation and maintenance of a causeway and its related roadways, created by two or more parishes, shall not appoint a member of the governing authority of any of the parishes or an employee thereof to the joint commission. No member of a parish governing authority or employee thereof shall serve as a member of a joint commission that has as its function the operation and maintenance of a causeway and its related roadways, created by the parish by agreement with one or more other parishes.

C. No other combination of offices or employments shall be deemed to be incompatible unless the powers, functions, or duties are found to be adverse to the public interest as set forth in Section 61 of this Part.

Added by Acts 1979, No. 700, § 1. Amended by Acts 1988, No. 363, § 2, eff. July 8, 1988.

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**§ 282. Record of monies received; penalty for violation**

All public offices except notaries public, shall keep a full and complete record of all monies received by them for account of the state or its subdivisions or as fees for services rendered.

Whoever violates the provisions of this section shall be fined, for the first offense, not less than twenty-five dollars nor more than fifty dollars, and for each subsequent offense not less than one hundred dollars nor more than five hundred dollars or imprisoned for not less than thirty days nor more than ninety days.

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## Title 42. Public Officers and Employees

## Chapter 15. Code of Governmental Ethics

## Part I. General Provisions

### § 1101. Declaration of policy

A. Whereas the people of the state of Louisiana have in Article X, Section 21 of the Louisiana Constitution mandated that the legislature enact a code of ethics for officials and employees of this state and its political subdivisions, the legislature does hereby enact a Code of Governmental Ethics.

B. It is essential to the proper operation of democratic government that elected officials and public employees be independent and impartial; that governmental decisions and policy be made in the proper channel of the governmental structure; that public office and employment not be used for private gain other than the remuneration provided by law; and that there be public confidence in the integrity of government. The attainment of one or more of these ends is impaired when a conflict exists between the private interests of an elected official or a public employee and his duties as such. The public interest, therefore, requires that the law protect against such conflicts of interest and that it establish appropriate ethical standards with respect to the conduct of elected officials and public employees without creating unnecessary barriers to public service. It is the purpose of this Chapter to implement these policies and objectives.

*Acts 1979, No. 443, § 1, eff. April 1, 1980.*

**§ 1102. Definitions**

Unless the context clearly indicates otherwise, the following words and terms, when used in this Chapter, shall have the following meanings:

(1) "Action of a governmental entity" means any action on the part of a governmental entity or agency thereof including, but not limited to:

(a) Any decision, determination, finding, ruling, or order, including the judgment or verdict of a court or a quasi-judicial board, in which the governmental entity or any of its agencies has an interest, except in such matters involving criminal prosecutions.

(b) Any grant, payment, award, license, contract, transaction, decision, sanction, or approval, or the denial thereof, or the failure to act with respect thereto; and in which the governmental entity or any of its agencies has an interest, except in matters involving criminal prosecutions.

(c) As the term relates to a public servant of the state, any disposition of any matter by the legislature or any committee thereof; and as the term relates to a public servant of a political subdivision, any disposition of any matter by the governing authority or any committee thereof.

(2)(a) "Agency" means a department, office, division, agency, commission, board, committee, or other organizational unit of a governmental entity. For purposes of this Chapter, "agency of the public servant" and "his agency" when used in reference to the agency of a public servant shall mean:

(i) For public servants in the twenty principal departments of the executive branch of state government, the office in which such public servant carries out his primary responsibilities; except that in the case of the secretary, deputy secretary, or undersecretary of any such department and officials carrying out the responsibilities of such department officers it shall mean the department in which he serves; and except that in the case of public servants who are members or employees of a board or commission or who provide staff assistance to a board or commission, it shall mean the board or commission.

(ii) For the governor and lieutenant governor, it shall mean the executive branch of state government.

(iii) For public servants in the office of the governor or the lieutenant governor it shall mean their respective offices.

(iv) For public servants in the legislative branch of state government, it shall mean the agency or house of the legislature by which a public employee is employed and the legislative branch in the case of legislators.

(v) For public employees, except judges, of the supreme court, courts of appeal, district courts, and other courts authorized by Article V of the Constitution of 1974, it shall mean the court in which the public employee serves and any other court in which decisions of that court may be reviewed.

(vi) For public servants of political subdivisions, it shall mean the agency in which the public servant serves, except that for members of any governing authority and

for the elected or appointed chief executive of a governmental entity, it shall mean the governmental entity. Public servants of political subdivisions shall include, but shall not be limited to, elected officials and public employees of municipalities, parishes, and other political subdivisions; sheriffs and their employees; district attorneys and their employees; coroners and their employees; and clerks of court and their employees.

(b) The board may adopt rules and regulations to provide for the application of this definition.

(3) "Agency head" means the chief executive or administrative officer of an agency or any member of a board or commission who exercises supervision over the agency.

(4) "Assist" means to act in such a way as to help, advise, furnish information to, or aid a person with the intent to assist such person.

(5) "Board" means the Board of Ethics.

(6) *Repealed by Acts 1996, 1st Ex. Sess., No. 64, § 10, eff. Jan. 1, 1997.*

(7) "Compensation" means any thing of economic value which is paid, loaned, granted, given, donated, or transferred or to be paid, loaned, granted, given, donated, or transferred for or in consideration of personal services to any person.

(8) "Controlling interest" means ownership by an individual or his spouse, either individually or collectively, of an interest which exceeds twenty-five percent of any legal entity.

(9) "Elected official" means any person holding an office in a governmental entity which is filled by the vote of the appropriate electorate. It shall also include any person appointed to fill a vacancy in such offices.

(10) "Ethics body" means the Board of Ethics.

(11) "Governing authority" means the body which exercises the legislative functions of a political subdivision.

(12) "Governmental entity" means the state or any political subdivision which employs the public employee or employed the former public employee or to which the elected official is elected, as the case may be.

(13) "Immediate family" as the term relates to a public servant means his children, the spouses of his children, brothers, sisters, parents, spouse, and the parents of his spouse.

(14) "Legislator" means any person holding office in the Senate or the House of Representatives of the Louisiana Legislature which is filled by the vote of the appropriate electorate.

(15) "Participate" means to take part in or to have or share responsibility for action of a governmental entity or a proceeding, personally, as a public servant of the governmental entity, through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or the failure to act or perform a duty.

(16) "Person" means an individual or legal entity other than a governmental entity, or an agency thereof.

(17) "Political subdivision" means any unit of local government, including a special district, authorized by law to perform governmental functions.

(18) "Public employee" means anyone, whether compensated or not, who is:

(a) An administrative officer or official of a governmental entity who is not filling an elective office.

(b) Appointed by any elected official when acting in an official capacity, and the appointment is to a post or position wherein the appointee is to serve the governmental entity or an agency thereof, either as a member of an agency, or as an employee thereof.

(c) Engaged in the performance of a governmental function.

(d) Under the supervision or authority of an elected official or another employee of the governmental entity.

A public employee shall be in such status on days on which he performs no services as well as days on which he performs services. The termination of any particular term of employment of a public employee shall take effect on the day the termination is clearly evidenced.

(19) "Public servant" means a public employee or an elected official.

(20) "Responsibility" in connection with a transaction involving a governmental entity means the direct administration or operating authority, whether intermediate or final, and either exercisable alone or with others, and

either personally or through or with others or subordinates, to effectively direct action of the governmental entity, as the case may be, in respect to such transaction.

(21) "Substantial economic interest" means an economic interest which is of greater benefit to the public servant or other person than to a general class or group of persons, except:

(a) The interest that the public servant has in his position, office, rank, salary, per diem, or other matter arising solely from his public employment or office.

(b) The interest that a person has as a member of the general public.

(22)(a) "Thing of economic value" means money or any other thing having economic value, except promotional items having no substantial resale value; food, drink, or refreshments consumed by a public servant, including reasonable transportation and entertainment incidental thereto, while the personal guest of some person, and, with reference to legislators and employees in the legislative branch of state government only, reasonable transportation when organized primarily for educational or informational purposes, including food and drink incidental thereto, and includes but is not limited to:

(i) Any loan, except a bona fide loan made by a duly licensed lending institution at the normal rate of interest, any property interest, interest in a contract, merchandise, service, and any employment or other arrangement involving a right to compensation.

(ii) Any option to obtain a thing of economic value, irrespective of the conditions to the exercise of such option.

(iii) Any promise or undertaking for the present or future delivery or procurement of a thing of economic value.

(b) In the case of an option, promise, or undertaking, the time of receipt of the thing of economic value shall be deemed to be, respectively, the time the right to the option becomes fixed, regardless of the conditions to its exercise, and the time when the promise or undertaking is made, regardless of the conditions to its performance.

(c) Things of economic value shall not include salary and related benefits of the public employee due to his public employment or salary and other emoluments of the office held by the elected official. Salary and related benefits of public employees of higher education institutions, boards, or systems shall include any supplementary compensation, use of property, or other benefits provided to such employees from funds or property accruing to the benefit of the institution, board, or system, as approved by the appropriate policy or management board, from an alumni organization recognized by the management board of a college or university within the state or from a foundation organized by the alumni or other supportive individuals of a college or university within the state the charter of which specifically provides that the purpose of the foundation is to aid said college or university in a philanthropic manner.

(d)(i) With reference to legislators and employees in the legislative branch of state government only, and for

purposes of this Section, "reasonable transportation", when organized primarily for educational or for informational purposes, including on-site inspections, shall include transportation to any point within the boundaries of this state, including the territorial waters thereof, and to any offshore structure located on the outer continental shelf seaward of such territorial waters and offshore of Louisiana. With reference to employees in the legislative branch of state government, such transportation shall only be for official legislative purposes and shall have prior approval from the presiding officer of the respective house wherein such legislative employee is employed.

(ii) With references to legislators only, "reasonable transportation", when organized primarily for entertainment purposes incidental to food, drink, or refreshments, shall include transportation to any point within this state that is within a fifty-mile radius of the perimeter of the legislator's district, or within a fifty-mile radius of the perimeter of the parish wherein the state capitol is located if the legislator is conducting official business in said parish.

(23) "Transaction involving the governmental entity" means any proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other such particular matter which the public servant or former public servant of the governmental entity in question knows or should know:

(a) Is, or will be, the subject of action by the governmental entity.

(b) Is one to which the governmental entity is or will be a party.

(c) Is one in which the governmental entity has a direct interest. A transaction involving the agency of a governmental entity shall have the same meaning with respect to the agency.

(24) "Service" means the performance of work, duties, or responsibilities, or the leasing, rental, or sale of movable or immovable property.

*Acts 1979, No. 443, § 1, eff. April 1, 1980. Amended by Acts 1980, No. 838, § 1; Acts 1983, No. 403, § 1; Acts 1985, No. 491, § 1; Acts 1986, No. 359, § 1; Acts 1988, No. 144, § 1; Acts 1990, No. 687, § 1, eff. July 20, 1990; Acts 1996, 1st Ex. Sess., No. 64, §§ 6, 10, eff. Jan. 1, 1997; Acts 1996, 1st Ex. Sess., No. 66, § 5, eff. Jan. 1, 1997; Acts 1998, 1st Ex. Sess. No. 163, § 1.*

## Part II. Ethical Standards for Public Servants

### § 1111. Payment from nonpublic sources

A.(1) Payments for services to the governmental entity. No public servant shall receive anything of economic value, other than compensation and benefits from the governmental entity to which he is duly entitled, for the performance of the duties and responsibilities of his office or position; however, supplementary compensation or benefits provided to an employee of a public higher education institution, board, or system from funds or property accruing to the benefit of the institution, board, or system as approved by the appropriate policy or management board, through an alumni organization recognized by the management board of a college or university within the state or through a foundation organized by the alumni or other supportive individuals of a college or

university within the state the charter of which specifically provides that the purpose of the foundation is to aid said college or university in a philanthropic manner shall be deemed for purposes of this Subsection as compensation and benefits from the government to which he is duly entitled.

(2) Any supplementary compensation or benefits provided to the commissioner of higher education or to an employee of the Board of Regents from funds or property accruing to the benefit of the board as approved by appropriate policy through a foundation organized to support higher education, including the Board of Regents, the charter of which specifically provides that the purpose of the foundation is to aid higher education in a philanthropic manner shall be deemed for purposes of this Subsection as compensation and benefits from the government to which he is duly entitled.

B. Finder's fees. No public servant shall receive any thing of economic value from a person to whom the public servant has directed business of the governmental entity.

C. Payments for nonpublic service.

(1) No public servant shall receive any thing of economic value for any service, the subject matter of which:

(a) Is devoted substantially to the responsibilities, programs, or operations of the agency of the public servant and in which the public servant has participated; or

(b) Draws substantially upon official data or ideas which have not become part of the body of public information.

(2) No public servant and no legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, shall receive any thing of economic value for or in consideration of services rendered, or to be rendered, to or for any person during his public service unless such services are:

(a) Bona fide and actually performed by the public servant or by the entity;

(b) Not within the course of his official duties;

(c) Not prohibited by R.S. 42:1112 or by applicable laws or regulations governing nonpublic employment for such public servant; and

(d) Neither performed for nor compensated by any person from whom such public servant would be prohibited by R.S. 42:1115(A)(1) or (B) from receiving a gift.

(3)(a) Notwithstanding any other provision of the law to the contrary, and specifically the provisions of this Section, an employee of the office of the clerk of court may research public records, prepare chains of title, or perform any other title abstract related work, for compensation from nonpublic sources, with the approval of the clerk of court, provided such services are not performed during the employee's assigned working hours, and does not interfere with the performance of his assigned duties.

(b) No clerk of court shall receive any compensation or any portion of compensation received by any employee from nonpublic sources for the performance of any services related to the preparation of chains of title or any other title abstract related work approved by the

clerk of court to be done by an employee during his nonworking hours.

(c) A willful violation of this Paragraph shall subject the clerk of court to a conviction of a misdemeanor and a fine of not less than five hundred dollars nor more than two thousand dollars.

(d) The clerk of court of each parish in conjunction with the parish governing authority shall promulgate rules and regulations for the use of its facilities, records, and equipment by all abstractors, including deputy clerks, regarding availability, costs, and procedures.

D. Payments for future services. No public servant shall receive, directly or indirectly, any thing of economic value during the term of his public service in consideration of personal services to be rendered to or for any person subsequent to the term of such public service; however, a public servant may enter into a contract for prospective employment during the term of his public service unless otherwise prohibited by R.S. 42:1116.

E. Payments for rendering assistance to certain persons.

(1) No public servant, and no legal entity of which such public servant is an officer, director, trustee, partner, or employee, or in which such public servant has a substantial economic interest, shall receive or agree to receive any thing of economic value for assisting a person in a transaction, or in an appearance in connection with a transaction, with the agency of such public servant.

(2)(a) No elected official of a governmental entity shall receive or agree to receive any thing of economic

value for assisting a person in a transaction or in an appearance in connection with a transaction with the governmental entity or its officials or agencies, unless he shall file a sworn written statement with the board prior to or at least ten days after initial assistance is rendered.

(b) The contents of the sworn written statement required by this Subsection shall be prescribed by the board and such statement shall be a public record.

(c) The board shall review all sworn statements filed in accordance with this Subsection. If the board determines that any such sworn statement is deficient or may suggest a possible violation of this Part, it shall, within ten days of the receipt of such statement, notify the elected official filing the statement of its findings. Such notification shall be deemed confidential and privileged and shall only be made public in connection with a public hearing by the board for an alleged violation of this Part where such would be relevant to the alleged violation for which the elected official is being investigated.

*Acts 1979, No. 443, § 1, eff. April 1, 1980; Acts 1983, No. 403, § 1; Acts 1983, No. 697, § 1; Acts 1986, No. 359, § 1; Acts 1992, No. 1123, § 1; Acts 1995, No. 74, § 1, eff. June 12, 1995.*

§ 1112. Participation in certain transactions involving the governmental entity

A. No public servant, except as provided in R.S. 42:1120, shall participate in a transaction in which he has a personal substantial economic interest of which he may be reasonably expected to know involving the governmental entity.

B. No public servant, except as provided in R.S. 42:1120, shall participate in a transaction involving the governmental entity in which, to his actual knowledge, any of the following persons has a substantial economic interest:

(1) Any member of his immediate family.

(2) Any person in which he has a substantial economic interest of which he may reasonably be expected to know.

(3) Any person of which he is an officer, director, trustee, partner, or employee.

(4) Any person with whom he is negotiating or has an arrangement concerning prospective employment.

(5) Any person who is a party to an existing contract with such public servant, or with any legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, or who owes any thing of economic value to such public servant, or to any legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, and who by reason thereof is in a position to affect directly the economic interests of such public servant.

C. Every public employee, excluding an appointed member of any board or commission, shall disqualify himself from participating in a transaction involving the governmental entity when a violation of this Part would result. The procedures for such disqualification shall be established by regulations issued pursuant to R.S. 42:1134(1).

D. No appointed member of any board or commission, except as provided in R.S. 42:1120.1 and R.S. 42:1120.2, shall participate or be interested in any transaction involving the agency when a violation of this Part would result.

*Acts 1979, No. 443, § 1, eff. April 1, 1980; Acts 1983, No. 697, § 1; Acts 1985, No. 426, § 2; Acts 1987, No. 370, § 1.*

**§ 1113. Prohibited contractual arrangements**

A. No public servant, excluding any legislator and any appointed member of any board or commission and any member of a governing authority of a parish with a population of ten thousand or less, or member of such a public servant's immediate family, or legal entity in which he has a controlling interest shall bid on or enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant.

B. Other than a legislator, no appointed member of any board or commission, member of his immediate family, or legal entity in which he has a substantial economic interest shall bid on or enter into or be in any way interested in any contract, subcontract, or other transaction which is under the supervision or jurisdiction of the agency of such appointed member.

C. No legislator, member of his immediate family, or legal entity in which he has a controlling interest shall bid on or enter into or be in any way interested in any contract, subcontract, or other transaction involving the legislator's agency.

D.(1)(a) No legislator or person who has been certified by the secretary of state as elected to the legislature, or spouse of a legislator or person who has been certified as elected to the legislature, nor any corporation, partnership, or other legal entity in which the legislator or person who has been certified by the secretary of state as elected to the legislature or the spouse of a legislator or spouse of a person who has been certified by the secretary of state as elected to the legislature owns any interest in, except publicly traded corporations, shall enter into any contract or subcontract with any branch, agency, department, or institution of state government or with the Louisiana Insurance Guaranty Association, the Louisiana Health Insurance Guaranty Association, or any other quasi public entity created in law unless the contract or subcontract is awarded by competitive bidding after being advertised and awarded in accordance with Part II of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950 or is competitively negotiated through a request for proposal process or any similar competitive selection process in accordance with Chapters 16 or 17 of Title 39 of the Louisiana Revised Statutes of 1950.

(b)(i) For the purposes of this Section, a provider agreement entered into with the Department of Health and Hospitals under the state medical assistance program shall not be considered a contract or subcontract.

(ii) For the purposes of this Section, a foster parent provider agreement or a child care provider agreement entered into with the Department of Social Services shall not be considered a contract or subcontract.

(2) The provisions of this Subsection shall not prohibit the following:

(a) Completion of any contract or subcontract otherwise prohibited by this Subsection which was entered into prior to initial election to the legislature; however, no such contract or subcontract shall be renewed.

(b) Completion of any contract or subcontract otherwise prohibited by this Subsection which was entered into prior to July 1, 1995; however, no such contract or subcontract shall be renewed.

(c) Contracts for employment in a professional educational capacity in an elementary or secondary school or other educational institution.

(d) Contracts of sale pursuant to the expropriation of immovable property by any branch, agency, department, or institution of state government.

(e) Contracts of employment of a physician with the state or the charity hospitals of the state.

*Acts 1979, No. 443, § 1, eff. April 1, 1980; Acts 1984, No. 830, § 1; Acts 1987, No. 730, § 1; Acts 1995, No. 1156, § 1; Acts 1997, No. 1279, § 1, eff. July 15, 1997; Acts 1998, 1st Ex. Sess., No. 119, § 1, eff. May 5, 1998.*

**§ 1114. Financial disclosure**

A. Other than a legislator, each public servant and each member of his immediate family who derives any thing of economic value, directly, through any transaction involving the agency of such public servant or who derives any thing of economic value of which he may be

reasonably expected to know through a person which (1) is regulated by the agency of such public servant, or (2) has bid on or entered into or is in any way financially interested in any contract, subcontract, or any transaction under the supervision or jurisdiction of the agency of such public servant shall disclose the following:

(1) The amount of income or value of any thing of economic value derived;

(2) The nature of the business activity;

(3) Name and address, and relationship to the public servant, if applicable; and

(4) The name and business address of the legal entity, if applicable.

B. Each legislator and each member of his immediate family who derives anything of economic value, directly, through any transaction involving the legislator's agency or who derives anything of economic value of which he may be reasonably expected to know through a person which has bid on or entered into or is in any way financially interested in any contract, subcontract, or any transaction involving the legislator's agency shall disclose the following:

(1) The amount of income or value of anything of economic value derived;

(2) The nature of the business activity;

(3) The name and address, and relationship to the legislator, if applicable; and

(4) The name and business address of the legal entity, if applicable.

C.(1) Other than a legislator, each elected official, his spouse, and any business enterprise in which he has a substantial economic interest, who derives anything of economic value through a contract or other subcontract from the state or any political subdivision shall disclose the following:

(a) The amount of income or value of anything of economic value derived;

(b) The nature of the business activity;

(c) The name and address, and relationship to the elected official, if applicable; and

(d) The name and business address of the political subdivision, if applicable.

(2) For the purposes of this Subsection, a "business enterprise", shall be included in the disclosure statement only if the elected official and/or his spouse owns at least ten percent of such enterprise.

D.(1) Each legislator, and each person who has been certified by the secretary of state as elected to the legislature, and each department officer shall disclose any contract or subcontract that such legislator or person who has been certified by the secretary of state as elected to the legislature or department officer or any of the following has entered into with any political subdivision:

(a) The spouse of such legislator or person who has been certified as elected to the legislature or department officer.

(b) Any corporation, partnership, or other legal entity in which the legislator or person who has been

certified by the secretary of state as elected to the legislature or department officer or the spouse of such legislator or person who has been certified by the secretary of state as elected to the legislature or department officer owns any interest in, except publicly traded corporations.

(2) Each legislator, each person who has been certified by the secretary of state as elected to the legislature, and each department officer shall disclose any income or compensation of any kind which is directly or indirectly related to services performed for or in connection with a gaming interest which is received by such legislator or person who has been certified by the secretary of state as elected to the legislature or department officer or any of the following:

(a) The spouse of such legislator, such person who has been certified as elected to the legislature, or such department officer.

(b) Any corporation, partnership, or other legal entity in which the legislator or person who has been certified by the secretary of state as elected to the legislature or department officer or the spouse of such legislator or such person who has been certified by the secretary of state as elected to the legislature or such department officer owns any interest in, except publicly traded corporations.

E. The disclosure statements required in this Section shall be filed each year with the appropriate ethics body by May first and shall include such information for the previous calendar year. Such statements shall be a matter of public record.

*Acts 1979, No. 443, § 1, eff. April 1, 1980; Acts 1990, No. 1084, § 1; Acts 1997, No. 1279, § 1, eff. July 15, 1997.*

**§ 1115. Gifts**

A. No public servant shall solicit or accept, directly or indirectly, any thing of economic value as a gift or gratuity from any person or from any officer, director, agent, or employee of such person, if such public servant knows or reasonably should know that such person:

(1) Has or is seeking to obtain contractual or other business or financial relationships with the public servant's agency, or

(2) Is seeking, for compensation, to influence the passage or defeat of legislation by the public servant's agency.

B. No public employee shall solicit or accept, directly or indirectly, anything of economic value as a gift or gratuity from any person or from any officer, director, agent, or employee of such person, if such public employee knows or reasonably should know that such person:

(1) Conducts operations or activities which are regulated by the public employee's agency.

(2) Has substantial economic interests which may be substantially affected by the performance or nonperformance of the public employee's official duty.

*Acts 1979, No. 443, § 1, eff. April 1, 1980; Acts 1983, No. 403, § 1; Acts 1987, No. 730, § 1.*

**§ 1116. Abuse of office**

A. No public servant shall use the authority of his office or position, directly or indirectly, in a manner intended to compel or coerce any person or other public servant to provide himself, any other public servant, or other person with any thing of economic value. This Subsection shall not be construed to limit that authority authorized by law, statute, ordinance, or legislative rule in carrying out official duties.

B. No public servant shall use the authority of his office or position, directly or indirectly, in a manner intended to compel or coerce any person or other public servant to engage in political activity. For the purposes of this Subsection, "political activity" means an effort to support or oppose the election of a candidate for political office in an election. This Subsection shall not be construed to limit that authority authorized by law, statute, ordinance, or legislative rule in carrying out official duties.

*Acts 1979, No. 443, § 1, eff. April 1, 1980; Acts 1997, No. 338, § 1.*

**§ 1116.1 Random drug testing of elected officials**

A. The legislature declares the interest of the state in ensuring that those who are elected to serve in public office at all levels of government are persons who have a respect for the laws they are to uphold and are persons of integrity, sound judgment, reliability, and seriousness of purpose. The legislature finds that the use of illegal drugs which may impair the physical or mental ability of an

elected official to function effectively in all aspects of his duties cannot be tolerated, and therefore the state has a compelling interest in establishing a requirement that all elected officials demonstrate that they do not use illegal drugs, without the necessity of showing any measure of individualized suspicion.

B.(1) The board shall develop and administer a program of random drug testing for elected officials, which shall require elected officials on a random basis to submit to a drug test which shall screen for the presence of illegal drugs. For the purposes of this Section, "illegal drug" means marijuana, opiods, cocaine, amphetamines, or phencyclidine, except that a drug taken in accordance with a lawful prescription shall not be considered an illegal drug.

(2) The board shall develop a plan which shall include a methodology for identifying and selecting those elected officials required to be tested for the use of illegal drugs. The board shall not disclose the name or identify the elected official selected for testing by name to the laboratory. Such plan shall include a confirmatory test to confirm that the positive results of the initial test are correct. The definitions and the drug testing procedures and standards as provided in Chapter 14 of Title 49 of the Louisiana Revised Statutes of 1950 shall be applicable to the program developed by the board.

(3) The board shall develop the random drug testing program in a manner that will be effective in detecting and deterring illegal drug use by elected officials. The commissioner of administration and the secretary of the Department of Health and Hospitals shall, at the request

of the board, provide assistance in the development, design, and implementation of the random drug testing program.

(4) The Board shall adopt such rules and regulations as are necessary for the implementation of the random drug testing program in accordance with the Administrative Procedure Act.

C. The program developed by the board shall require the elected official to submit to a drug test at a laboratory approved by the board. The board shall maintain a list of such approved laboratories which meet the drug testing standards as set forth in Chapter 14 of Title 49 of the Louisiana Revised Statutes of 1950. All costs of the program, including the cost of all drug tests, shall be paid by the board. The board shall pay the cost of any confirmatory test required by this Section.

D.(1) All information, interviews, reports, statements, memoranda, or test results received by the board through its drug testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in a proceeding, hearing, or civil litigation for a violation of this Section.

(2) The results of a positive initial test shall only be disclosed to the tested elected official and to the person designated by the board to receive such information, but may be disclosed to the board or an authorized employee or agent of the board should the confirmatory test also indicate the presence of illegal drugs.

(3) Except as otherwise provided in this Subsection, no person shall disclose the name of the person selected for testing, the administration of the test, or the test results of any person tested pursuant to this Section to any person other than the board or an authorized employee or agent of the board, or the tested elected official.

(4) Notwithstanding the provisions of R.S. 42:1141(E)(12), an elected official shall be furnished a copy of the results of any drug test he has submitted to under the provisions of this Section and such elected official shall not be prohibited from disclosing the results of such drug test to any person.

E. No elected official shall test positive for illegal drugs nor refuse to submit to a drug test when requested to do so by the board pursuant to the provisions of this Section. A violation of this Section shall subject the elected official to the penalties provided by this Chapter. However, the board shall not impose any penalty on an elected official for testing positive for illegal drugs unless he has tested positive for illegal drugs on two separate occasions. For the purposes of this Subsection, a positive initial test and the confirmatory test of such positive initial test shall be considered one occasion.

*Acts 1997, No. 1303, § 1.*

**§ 1117. Illegal payments**

No public servant or other person shall give, pay, loan, transfer, or deliver or offer to give, pay, loan, transfer, or deliver, directly or indirectly, to any public servant or other person any thing of economic value which such

public servant or other person would be prohibited from receiving by any provision of this Part.

*Acts 1979, No. 443, § 1, eff. April 1, 1980.*

**§ 1118. Influencing action by legislature or governing authority**

No public servant shall solicit or receive any thing of economic value, directly or indirectly, for, or to be used by him or a member of his immediate family principally to aid in, (1) the accomplishment of the passage or defeat of any matter affecting his agency by the legislature, if his agency is a state agency, or by the governing authority, if his agency is an agency of a political subdivision, or (2) the influencing, directly or indirectly, of the passage or defeat of any matter affecting his agency by the legislature, if his agency is a state agency, or by the governing authority, if his agency is an agency of a political subdivision.

*Acts 1979, No. 443, § 1, eff. April 1, 1980.*

**§ 1118.1. Studies or position papers on public policy**

A. If not otherwise prohibited by the code of ethics, any public employee of the executive, judicial, or legislative branch of state government or any local governmental subdivision who contracts with a person or governmental entity to provide political position papers, economic studies, or policy statements relative to public policy concerning any rule, regulation, or legislation proposed, passed, or adopted by the state or any of its political subdivisions, or any entity receiving public

funds, shall disclose the name and address of the person or governmental entity engaging his services, the amount of the contract, and the nature of the business or relationship.

B. The disclosure statements required by this Section shall be filed with the appropriate ethics body for public employees prior to the publication, dissemination, or public release of such paper, study, or statement.

*Acts 1992, No. 927, § 1.*

**§ 1119. Nepotism**

A. No member of the immediate family of an agency head shall be employed in his agency.

B.(1) No member of the immediate family of a member of a governing authority or the chief executive of a governmental entity shall be employed by the governmental entity.

(2) Notwithstanding the provisions of Paragraph B(1):

(a)(i) Any local school board may employ any member of the immediate family of any board member or of the superintendent as a classroom teacher provided that such family member is certified to teach. Any school board member or superintendent whose immediate family member is employed by the school board shall recuse himself from any decision involving the promotion or assignment of teaching location of such employee.

(ii) In addition, within thirty days after the beginning of each school year, any school board member or

superintendent whose immediate family member is employed by the school board shall file a disclosure statement with the Board of Ethics stating the facts of such employment.

(b)(i) Any hospital service district with a population of one hundred thousand persons or less as of the most recent federal decennial census or hospital public trust authority located in such a district may employ a licensed physician or registered nurse who is a member of the immediate family of any district board or authority member or of the chief executive of the district or authority as a health care provider. The chief executive and any member of a board of a hospital service district or hospital public trust authority which employs such physician or registered nurse shall recuse himself from any decision involving the promotion, discipline, discharge, or assignment of any such employee who is a member of his immediate family.

(ii) In addition, no later than January thirtieth of each year, any chief executive and any member of a board of a hospital service district or hospital public trust authority whose immediate family member is employed by the hospital service district or hospital public trust authority shall file a disclosure statement with the Board of Ethics stating the facts of such employment.

C.(1) Any person serving in public employment on the effective date of this Section, whose employment is in violation of this Section, may continue in such employment and the provisions of this Section shall not be construed to hinder, alter, or in any way affect normal

promotional advancements in public employment for such employee.

(2) The provisions of this Section shall not prohibit the continued employment of any public employee nor shall it be construed to hinder, alter, or in any way affect normal promotional advancements for such public employee where a member of public employees' immediate family becomes the agency head of such public employee's agency, provided that such public employee has been employed in the agency for a period of at least one year prior to the member of the public employee's immediate family becoming the agency head.

(3) The provisions of the Section shall not apply to pilots appointed by the governor pursuant to R.S. 34:943, 34:992, 34:1043, and 34:1072.

(4) The provisions of this Section shall not apply to the hiring of immediate family members of members of a governing authority of a municipality with less than two thousand population and which owns an electrical or gas distribution system. Any member of the governing authority which employs an immediate family member shall recuse himself from any decision involving the promotion, discipline, discharge, or assignment of work of his immediate family member. However, the provisions of this Paragraph shall only apply when, after proper advertisement, there is no other resident of the municipality who is qualified and has applied for the position of employment.

D. A willful violation of this Section shall subject the agency head, member of the governing authority, or chief executive, as the case may be, the public employee

having authority to hire and fire the employee, the immediate supervisor of the employee, and such employee, to disciplinary action and penalties provided by this Chapter.

*Acts 1979, No. 443, § 1, eff. April 1, 1980. Amended by Acts 1982, No. 640, § 1; Acts 1992, No. 598, § 1; Acts 1995, No. 196, § 1, eff. June 14, 1995; Acts 1997, No. 329, § 1; Acts 1997, No. 342, § 1, eff. June 20, 1997.*

**§ 1120. Recusal from voting**

A. If any elected official, in the discharge of a duty or responsibility of his office or position, would be required to vote on a matter which vote would be a violation of R.S. 42:1112, he shall recuse himself from voting. Notwithstanding the foregoing, an elected official shall not be required to recuse himself if he prepares and files the statement required by this Section as provided herein. In such case, the elected official shall prepare in writing a statement describing the matter in question, the nature of the conflict or potential conflict, and the reasons why, despite the conflict, the elected official is able to cast a vote that is fair, objective, and in the public interest. Such statement shall be filed within three days of the vote with the chief clerical officer of the respective house of the legislature, of the legislative committee, of the governing authority, or of any other body in which the vote is taken, as the case may be, who shall cause the statement to be recorded in the official journal, minutes, or other official record of the body. In addition, the elected official shall be required to file a copy of such statement

as it appears in such published or recorded official journal, minutes, or record, with the appropriate ethics body.

B. This Section shall not be applicable when the elected official is the sole decisionmaker in the discharge of the particular duty or responsibility of his office or position.

C. This Section shall not extend to any act of participation other than voting.

*Acts 1979, No. 443, § 1, eff. April 1, 1980; Acts 1988, No. 880, § 1.*

**§ 1120.1. Recusal from voting; Board of Commissioners of the Port of New Orleans**

If any member of the Board of Commissioners of the Port of New Orleans, in the discharge of a duty or responsibility of his office or position, would be required to vote on a matter which vote would be a violation of R.S. 42:1112 or 1113(B), he shall recuse himself from voting.

*Acts 1985, No. 426, § 2.*

**§ 1120.2. Recusal from voting; Housing Authority Members**

If a tenant of a housing authority who also serves as a member of the board of commissioners of that housing authority, in the discharge of a duty or responsibility of his office or position, would be required to vote on a matter which vote would be a violation of R.S. 42:1112, he shall recuse himself from voting.

*Acts 1987, No. 370, § 1.*

**1121. Assistance to certain persons after termination of public service**

A.(1) No former agency head or elected official shall, for a period of two years following the termination of his public service as the head of such agency or as an elected public official serving in such agency, assist another person, for compensation, in a transaction, or in an appearance in connection with a transaction, involving that agency or render any service on a contractual basis to or for such agency.

(2) No former member of a board or commission shall, for a period of two years following the termination of his public service on such board or commission, contract with, be employed in any capacity by, or be appointed to any position by that board or commission.

B. General rule for other public employees. No former public employee shall, for a period of two years following the termination of his public employment, assist another person, for compensation, in a transaction, or in an appearance in connection with a transaction in which such former public employee participated at any time during his public employment and involving the governmental entity by which he was formerly employed, or for a period of two years following termination of his public employment, render, on a contractual basis to or for the agency with which he was formerly employed, any service which such former public employee had rendered to the agency during the term of his public employment.

C. No legal entity in which a former public servant is an officer, director, trustee, partner, or employee shall,

for a period of two years following the termination of his public service, assist another person, for compensation, in a transaction, or in an appearance in connection with a transaction in which such public servant at any time participated during his public service and involving the agency by which he was formerly employed or in which he formerly held office.

D. No former public servant shall share in any compensation received by another person for assistance which such former public servant is prohibited from rendering by this Section.

E. Termination of public service. For the purposes of Subsections B and C of this Section, termination of public employment or service means the termination of employment with the agency which employed the public employee, or the termination of public service with the agency in which an elected official served, when he participated in the transaction.

F.(1) Each officer and employee of the office of financial institutions, including the commissioner, shall be prohibited for a period of two years following the termination of his employment with the office of financial institutions from:

(a) Assisting another person for compensation in a particular transaction or in an appearance in connection with a particular transaction for which the officer or employee had responsibility to effectively direct the action of the office of financial institutions at any time during his employment and which involves the office of financial institutions; or

(b) Rendering on a contractual basis to or for the office of financial institutions any service which the officer or employee rendered to the office of financial institutions during his employment there.

(2) However, the provisions of Paragraph (1) of this Subsection shall not apply to post-employment work done for or with a federally chartered agency regulating financial institutions or their holding companies.

(3) A legal entity in which a former officer or employee of the office of financial institutions is an officer, director, trustee, partner, or employee shall be prohibited for a period of two years following the termination of his employment, from assisting another person for compensation in a particular transaction or in an appearance in connection with a particular transaction for which such officer or employee had responsibility to effectively direct the action of the office of financial institutions at any time during his employment and which involves the office of financial institutions. This restriction shall not apply to a legal entity which is a federally chartered agency regulating financial institutions or their holding companies. Subject to the provisions of Paragraphs (1), (2), and (4) of this Subsection, such a legal entity may continue to participate in particular transactions commenced prior to termination of the employment with the office of financial institutions of the former officer or employee.

(4) No former officer or employee shall share in any compensation received by another person for assistance which such former officer or employee is prohibited from rendering by this Subsection.

(5) Notwithstanding any other law to the contrary, this Subsection shall be applicable to each officer and employee of the office of financial institutions and shall be the sole controlling provision on post-employment restrictions for such officers and employees.

G. *Repealed by Acts 1997, No. 944, § 1.*

*Acts 1979, No. 443, § 1, eff. April 1, 1980; H.C.R. No. 45, 1983 R.S.; H.C.R. No. 237, 1984 R.S.; Acts 1987, No. 893, § 1; HCR No. 203, 1988 R.S., eff. July 8, 1988; Acts 1993, No. 445, § 1; Acts 1997, No. 745, § 1; Acts 1997, No. 944, § 1; Acts 1997, No. 1059, § 1.*

**§ 1122. Continuation in certain pension and other plans by public servants**

A. Pension and benefit plans. A public servant may continue in a bona fide pension, insurance, or other benefit plan maintained by a former employer, provided that such former employer makes no contributions in his behalf with respect to the period of his public service. However, a former employer may make contributions to a pension plan that is qualified under the Internal Revenue Code or to any pension, insurance, or other benefit plan, if such contributions are made on behalf of all former employees who continue in the plan.

B. Profit sharing or stock bonus plans. The rights acquired by a public servant under a bona fide profit sharing or stock bonus plan qualified under the Internal Revenue Code and maintained by a former employer may be retained by such public servant, provided the former employer makes no contributions on his behalf based

upon profits derived during the period of his public service.

*Acts 1979, No. 443, § 1, eff. April 1, 1980.*

**§ 1123. Exceptions**

This Part shall not preclude:

(1) Participation in the affairs of charitable, religious, nonprofit educational, public service, or civic organizations, bona fide organized public volunteer fire departments when no compensation is received, or the activities of political parties not proscribed by law. Provided, however, that the Code of Governmental Ethics shall apply to the purchase of fire trucks by bona fide organized public fire departments.

(2)(a) Awards for meritorious public contributions given by public service organizations.

(b) Awards of anything of economic value received by teachers or school employees pursuant to the provisions of R.S. 17:432, 432.1, or 433 for their outstanding achievement in the performance of their duties or responsibilities as teachers given by any person. However, this exception shall not apply to any award from any person or from any officer, director, agent, or employee of such person, if the teacher receiving the award knows or reasonably should know that the person has substantial economic interests which may be substantially affected by the performance or nonperformance of the teacher's official duty.

(3) Sharing in any compensation received from the governmental entity by a person of which such public

servant owns or controls less than ten percent, provided such public servant did not participate or assist in the procurement of such compensation, except as otherwise specifically prohibited by R.S. 42:1113.

(4) Sharing in any compensation received from the governmental entity by a person of which such public servant owns or controls any portion thereof, provided such compensation was received by such person as a result of having made the lowest sealed competitive bid on a contract or subcontract and having had such bid accepted by the governmental entity or the general contractor, and provided such public servant did not participate or assist in the procurement of the acceptance of such low bid, except as otherwise specifically prohibited by R.S. 42:1113.

(5) Campaign contributions for use in meeting campaign expenses by any public servant who is or becomes a candidate for election to the same or another public office.

(6) Any activity of any public employee of a public higher education institution in this state who is covered by the tenure policy of the Board of Regents or the tenure policies and the administration of the tenure policies by the three higher education management boards and which activity is required by either regional or professional accreditation standards of organizations recognized by the Council on Postsecondary Accreditation.

(7) The employment with the office of mental health of the Department of Health and Human Resources of a licensed physician who is a member of the psychiatric faculty of and compensated by Tulane University.

(8) Any individual employed in the maritime industry from serving as an appointed member of the Board of Commissioners of the Port of New Orleans.

(9)(a) The receipt of or sharing in the proceeds of any patent, copyright, licensing right, or royalty by faculty or staff members of a public higher education institution or management board resulting from any activity of the faculty or staff member, which is consistent with and pursuant to the mission of the college or university to advance knowledge or further the economic development of the state and which activity has been approved by the campus head and the management board of the employing college or university.

(b) The performance of services for compensation for any person, by faculty or staff members of a public higher education institution, provided the services consist of consulting related to the academic discipline or expertise of said public employee, or the continued performance of such services by former faculty or staff members of a public higher education institution subsequent to the termination of their public service and notwithstanding contrary provisions of R.S. 42:1121, and provided the services have been approved in writing by the chief administrative officer of the public employee's institution in accordance with rules and procedures established by the management board of the institution, which rules and procedures have been approved by the Board of Regents and the Board of Ethics.

(10)(a) The negotiation or entering into a contract as defined in Subparagraph (b) of this Paragraph, provided that such contract has been approved in accordance with

a procedure established by the appropriate higher education management board which procedure has been approved by the Board of Regents and the Board of Ethics. Such an approval procedure shall require a finding and certification by the appropriate management board to the Board of Regents that entering into such contract will contribute to the economic development of the state and that entering into such contract will not interfere or conflict with the employee's obligation to the university. Semiannually, the Board of Regents shall report all such certifications to the committees on commerce of the Senate and House of Representatives or any subcommittee designated by either standing committee.

(b) A contract between an institution of higher education and a member of its faculty, research staff, or athletic coaching staff or a legal entity in which such employee has a substantial economic interest, regarding the disposition of any patent, copyright, licensing right, or royalty which is attached to a discovery, technique, or technology resulting from the research done by such employee in the course of his employment with the institution, or regarding an activity related to or resulting from the athletic coaching or research activity of such employee conducted in the course of his employment with the institution.

(11)(a) The employment with the office of public health of the Department of Health and Hospitals of retired public health physicians by professional services contracts for part-time clinician services in parish health units. However, a yearly contract shall not exceed twenty percent of the retired employee's former salary. A retired physician shall be employed under this Subparagraph

only if there are no public health physicians available to perform the services.

(b) The employment with the Department of Health and Hospitals of retired registered nurses by contract to perform health care services. However, such a contract shall be deemed to be null and void in the event that a registered nurse becomes available to perform the services. A retired registered nurse shall be employed under this Subparagraph only if the nurse was retired on April 1, 1990, and there are no registered nurses available to perform the services.

(12) Any tenant of a housing authority, as defined in R.S. 40:382, from serving on the board of commissioners of that housing authority.

(13) The acceptance by a legislator of anything of economic value as a gift or gratuity from any person when the value of such gift does not exceed one hundred dollars per event, up to an aggregate amount of five hundred dollars in a calendar year from any person, and when the nature of the gift is limited to a cultural or sporting event within the boundaries of this state including the territorial waters thereof, including the entertainment reasonably incident thereto. The provisions of this Paragraph shall also be applicable to legislators who are on official state business outside of the boundaries of this state as long as said legislators are entitled to per diem for such official business.

(14) Persons employed by public school systems to provide special education and related services pursuant to R.S. 17:1941 et seq. to exceptional children, as defined by R.S. 17:1943(1), from performing, on a private fee basis

and outside of school hours, those same special education and related services for their own students or any other persons eligible to receive such services from their school system during school hours, provided that the child's parents or guardian are advised, in writing, of the procedures through which their child may be evaluated for eligibility to receive such services for free through the school system. With respect to any child already receiving such services for free through the school system, the notice shall explain the procedures through which the child's eligibility to receive additional services for free from the school system may be reviewed.

(15) The use by a duly commissioned law enforcement officer of a publicly owned law enforcement vehicle in connection with the private employment of such law enforcement officer in providing traffic control or security services for a private employer when such use is approved by and in accordance with the policy of the law enforcement officer's public employer, which policy shall be published in the official journal of the parish prior to becoming effective and shall provide for appropriate charges for the use of public vehicles for private employment.

(16)(a) Notwithstanding the provisions of R.S. 42:1102(22), when making a public speech, the acceptance by a member of the legislature of food, refreshments, and lodging reasonably related to making such speech, as well as reasonable transportation from his home, or the capitol, to and from the site of the speaking engagement from the sponsoring group or organization, provided the public speech is given in any state of the United States or Canada and provided such member of the legislature files

an affidavit with the Board of Ethics, within sixty days of making such public speech, disclosing the name of the sponsoring group or organization and the amount expended on his behalf by the sponsoring group or organization on food and refreshments, lodging, and transportation.

(b) For the purposes of this Paragraph, the phrase "public speech" shall mean a speech, or other oral presentation, including a panel discussion, or radio or television appearance before the public at large, or before any civic, political, religious, educational, or eleemosynary group or organization by a member of the legislature in his capacity as a legislator.

(17)(a) Notwithstanding the provisions of R.S. 42:1111(C)(2)(d) or 1113(A), in municipalities with a population no greater than five thousand, in accordance with the most recent decennial census, a member of any municipal governing authority or any mayor from being a compensated director, officer, or employee of any national or state bank or state or federally chartered savings and loan association or savings bank into which funds of the municipality are deposited.

(b) This exception shall be effective only when the following conditions are met:

(i) Publication of notice has been made on two separate occasions in the official journal of the municipality, the first of which is at least fifteen days prior to public hearing on the matter. Such notice shall include the name of the financial institution(s) in which municipal funds are to be deposited and the amount of such deposit(s).

(ii) In municipalities where more than one financial institution is located, average annual deposits of municipal funds in one such financial institution shall not exceed the average annual deposits in any other such financial institution by more than ten percent, except in cases where funds are deposited pursuant to competitive bid.

(iii) The municipal funds are deposited with the approval of the municipal governing authority and the mayor.

(c) This exception shall not affect the application of R.S. 42:1112.

(18) A licensed physician who is a member of a board of commissioners for any hospital service district authorized by Chapter 10 of Title 46 of the Louisiana Revised Statutes of 1950 located within a parish which has a population of twenty-five thousand or less from contracting or subcontracting from another provider with the hospital over which the board exercises jurisdiction. However, such licensed physician shall recuse himself from participating in any transaction before the board relating to any contracts entered into by him and permitted by this Paragraph.

(19) Any member of the Louisiana Wildlife and Fisheries Commission from holding or obtaining a renewal of oyster leases with the state, personally or through legal entities in which he has ownership interests, even though such leases are subject to the supervision and jurisdiction of the commission, provided that such member shall disqualify himself from participating in any transaction involving the said oyster leases.

(20) An airport authority member or employee in an airport in any parish having a population of less than two hundred thousand persons, according to the most recent census, or an airport authority member or employee in an airport in any parish having a population of two hundred thousand persons or more according to the most recent census if the airport over which such an airport authority has jurisdiction does not have scheduled air service, from using any of the services available at the airport over which he exercises jurisdiction or by which he is employed; provided the services are available to the member or employee subject to the same terms, conditions, and availability as to any other member of the public, whether such services are obtained directly from the airport or from a fixed-based operator. The provisions of this Paragraph shall not apply to the Louisiana Airport Authority.

(21) A building inspector employed by a municipality with a population of twenty-five thousand persons or less as of the most recent federal decennial census, a member of such building inspector's immediate family, or a legal entity in which such building inspector has a controlling interest from performing construction services that are under the supervision or jurisdiction of the agency or governmental entity of the building inspector, provided such services are not performed during the building inspector's assigned working hours, do not interfere with the performance of his assigned duties, and do not include construction services performed for the agency or governmental entity of the building inspector. Under no circumstances shall the building inspector inspect his own work, the work of his immediate family,

or the work of a legal entity in which the building inspector has a controlling interest. A "building inspector" shall mean any person employed by a municipality who tests, examines, or issues a permit for compliance with a building code as defined in R.S. 33:4771.

(22)(a) Any mayor or member of a governing authority of a municipality with a population of one thousand five hundred or less, or legal entity in which he has a controlling interest, from entering into any transaction that is under the supervision or jurisdiction of the municipality. However, such member shall recuse himself from participating in any matter before the governing authority relating to any transactions entered into by him and permitted by this Paragraph.

(b) This exception shall be effective only when the Board of Ethics has developed regulations to implement this exemption in accordance with the Administrative Procedure Act.

(23) Any member of the state or regional advisory committees for the office for citizens with developmental disabilities from being employed by a private, nonprofit, corporation, agency, organization, or association that receives state funds under contractual agreement with the office for citizens with developmental disabilities. However, such member shall recuse himself from participating in any action of the committee specifically relating to such contracts with the office for citizens with developmental disabilities for the receipt of state funds.

(24) Any member of the State Licensing Board for Contractors from serving on such board even if he, a member of his immediate family, or a business in which

he has a substantial economic interest has participated in a transaction that comes before such board for administrative action. However, such member shall recuse himself from participating in any administrative hearing specifically relating to such transaction. Investigations of such transactions by the staff of the State Licensing Board for Contractors without the direct involvement of such board shall not constitute a violation of this Chapter.

(25) Any client who is not also a vendor of a charitable organization from serving on its board of directors or advisory board, provided that such clients do not constitute twenty percent or more of the board of directors or advisory board. For the purposes of this Paragraph, "charitable organization" shall mean a nonprofit board or association of a community-based HIV/AIDS service corporation or organization domiciled in this state and qualified with the United States Internal Revenue Service for an exemption from federal income tax under Section 501(c)(3), (4), (5), (6), (7), (8), (10), or (19) of the Internal Revenue Code.

(26) The acceptance by a public servant of anything of economic value as a gift or gratuity from any person when the value of such gift or gratuity does not exceed one hundred dollars per event, for flowers or a donation in connection with the death of a member of the immediate family of a public servant.

*Acts 1979, No. 443, § 1, eff. April 1, 1980; Acts 1983, No. 719, § 1; Acts 1985, No. 220, § 1, eff. July 6, 1985; Acts 1985, No. 426, § 2; Acts 1986, No. 374, § 1; Acts 1987, No. 229, § 1; Acts 1987, No. 370, § 1; Acts 1987, No. 491, § 1; Acts 1987, No. 593, § 1, eff. July 9, 1987; Acts 1987, No. 624, § 1; Acts*

*1988, No. 623, § 1, eff. July 14, 1988; Acts 1989, No. 187, § 1; Acts 1990, No. 97, § 1; Acts 1991, No. 1037, § 1; Acts 1992, No. 846, § 1, eff. July 8, 1992; Acts 1993, No. 220, § 1, eff. June 2, 1993; Acts 1993, No. 257, § 1, eff. June 2, 1993; Acts 1993, No. 965, § 2, eff. August 15, 1993; Acts 1993, No. 1037, § 1; Acts 1995, No. 289, § 2; Acts 1995, No. 1156, § 1; Acts 1995, No. 1157, § 1; Acts 1996, 1st Ex. Sess., No. 64, § 11, eff. Jan. 1, 1997; Acts 1997, No. 501, § 1; Acts 1997, No. 848, § 1; Acts 1997, No. 893, § 1; Acts 1997, No. 1107, § 1.*

**§ 1124. Financial disclosure for the governor**

A. Within thirty days after the date on which the governor enters upon the discharge of his duties as such, and annually thereafter, and within thirty days after the date on which the governor ceases to discharge the duties of his office, he shall file a financial statement, as provided in Subsection B of this Section.

B.(1) The financial statement required by this Section shall be filed on a form prescribed by the Board of Ethics and shall include the following information for the preceding calendar year:

(a) The full name and residence address of the individual who is required to file.

(b) The full name of the individual's spouse, if any, and the spouse's occupation and principal business address.

(c) The name, address, and nature of association with and the amount of interest in each business in which the individual or spouse is a director, officer, owner, partner, member, or trustee, or in which the individual or

spouse, either individually or collectively, holds an interest worth in excess of ten percent.

(d) The name, address, type, and amount of each source of income, in excess of one thousand dollars, received by the individual or spouse, and the nature of the services rendered therefor, if any. For income derived from mental health, medical health, or legal services rendered, the individual need only show the amount of the income and not the identity of any individual patient or client.

(e) A brief description, location, and address of each parcel of real property, the fair market value of which exceeds two thousand dollars, in which the individual or spouse, either individually or collectively, has an interest.

(f) A brief description, amount, and date of any purchase, sale, exchange, donation, gift, or other acquisition or disposition, in excess of one thousand dollars, of any real property, and of any stocks, bonds, commodities futures, or other forms of securities, including but not limited to, any option to acquire and/or dispose of any stocks, bonds, commodities futures, other forms of securities, negotiable instruments, movable or immovable property, or any other interest.

(g) The name, address, and amount of each liability owed to any creditor by the individual or spouse which exceeds ten thousand dollars, excluding any loan secured by a personal motor vehicle, household furniture, or appliances, if such loan does not exceed the purchase price of the item which secures it.

(2) When an amount is required to be disclosed pursuant to this Section, it shall be sufficient to report the amount by category of value. The categories shall be: (a) Category I, less than five thousand dollars; (b) Category II, $5,000-$24,999; (c) Category III, $25,000-$49,999; (d) Category IV, $50,000-$99,999; (e) Category V, $100,000-$199,999; (f) Category VI, $200,000 or more. Amounts required to be disclosed shall be valued at actual or fair market value, whichever is greater.

(3) For purposes of this Section, the following words shall have the following meanings:

(a) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, business, organization, self-employed individual, holding company, trust, or any other legal entity or person.

(b) "Income" means any income from whatever source derived, including but not limited to the following items: compensation for services, including fees, salaries, commissions, and similar items; income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from interest in an estate or trust.

(4) The financial statement shall be filed with the Board of Ethics and shall be accompanied by the affidavit of the public official filing it certifying that the information contained in the financial statement is true and correct to the best of his knowledge, information, and belief.

The financial statement shall be a public record, subject to the provisions of Chapter 1 of Title 44 of the Louisiana Revised Statutes of 1950.

(5) For the purposes of this Section, an individual or spouse shall not transfer any asset, interest, or liability required to be disclosed pursuant to Paragraph (1) of this Subsection to any person or business for the purpose of avoiding disclosure, unless such transfer is irrevocable. A transfer shall not be irrevocable if there exists any contract, letter, counter letter, note, or any other legally enforceable agreement or authority which if exercised or enforced would require or authorize any asset, interest, or liability transferred by an individual or spouse to a person or business to revert back to such individual or spouse.

C.(1) Whoever fails to file a financial statement required by this Part, or knowingly and willfully fails to timely file any such statement, or knowingly and willfully fails to disclose or to accurately disclose any information required by this Part shall be assessed a civil penalty pursuant to R.S. 42:1157 for each day until such statement or the required accurate information is filed.

(2) The amount of such penalty shall be:

(a) Five hundred dollars per day for statements required by R.S. 42:1124.

(b) One hundred dollars per day for statements required by R.S. 42:1114.

(3) "Knowingly and willfully", for purposes of this Subsection, means conduct which could have been avoided through the exercise of due diligence.

D. Whoever knowingly and willfully files a false report required by this Part shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one thousand dollars nor more than ten thousand dollars or imprisoned in parish prison for not less than six months, or both.

*Added by Acts 1982, No. 747, § 2; Acts 1996, 1st Ex. Sess., No. 64, § 11, eff. Jan. 1, 1997; Acts 1996, 1st Ex. Sess., No. 66, § 3, eff. Jan. 1, 1997.*

**§ 1125. Contribution acquired for transition and inauguration; definitions; reporting**

A. Any contribution received and accepted by the governor-elect, or anyone on his behalf, following the promulgation of the returns of the general election declaring him to be the governor-elect until his inauguration, shall be reported by the governor to the Board of Ethics as provided for in this Section. The report shall be accompanied by an affidavit by the governor certifying that the information contained in the report is true and correct to the best of his knowledge, information, and belief.

B. As used in this Section:

(1) "Contribution" means a gift, loan, conveyance, payment, or deposit of money or anything of value, including an in-kind contribution, made for the purpose of supporting the transition and any event, activity, or fund associated with the inauguration of the governor-elect. However, "contribution" shall not include funds

received pursuant to R.S. 49:209 or the receipt and acceptance of a campaign contribution as defined in R.S. 18:1483(6).

(2) "Transition" means the effort to organize the operations of the governor-elect and includes the acquisition of funds to cover necessary office expenses, including the rental of office space, the employment of clerical and other assistance, and office provisions such as stationery, postage, telephone service or other similar charges.

C. On or before the sixtieth day after the gubernatorial inauguration, the governor shall file one all-inclusive report with the Board of Ethics for which reporting is required by Subsection A which shall state:

(1) The name and address of each person, natural or legal, who has made a contribution.

(2) The date and amount of each contribution and a brief description and valuation of each in-kind contribution.

D. The governor shall be immune from civil liability as a result of any disclosure made pursuant to this Section.

E. Notwithstanding any other provision of law to the contrary, all information required to be reported pursuant to this Section shall be public record.

*Acts 1997, No. 1263, § 1.*

## Part III. Administration, Procedure and Enforcement

### Subpart A. Administration

**§ 1131.** *Repealed by Acts 1996, 1st Ex. Sess., No. 64, § 10, eff. Jan. 1, 1997.*

**§ 1132. Board of Ethics**

A. Board established. There is hereby established in the Department of State Civil Service the Board of Ethics to be domiciled in the city of Baton Rouge.

B. Membership; terms; vacancies; qualifications. (1) The board shall consist of eleven members to be selected as follows:

(a) The governor shall appoint seven members, who shall be representative of the state's population as near as practicable and who shall be subject to Senate confirmation. At least one member shall be appointed from each congressional district. The governor shall appoint one member, who shall be a retired or former justice of the Louisiana Supreme Court, or a retired or former judge of a court of appeals or district court of this state.

(b) Two members shall be elected by the House of Representatives.

(c) Two members shall be elected by the Senate.

(2) The governor shall appoint and the House of Representatives and the Senate shall elect members to the board who shall be representative of the state's population as near as practicable and who shall be from nominees who are selected as follows:

(a) The presidents of Centenary College of Louisiana, Dillard University at New Orleans, Louisiana College, Loyola University at New Orleans, Our Lady of Holy Cross College at New Orleans, Our Lady of the Lake College at Baton Rouge, and Xavier University of Louisiana at New Orleans; and the dean of H. Sophie Newcomb College of Tulane University shall constitute the nominating committee. The nominating committee shall, within sixty days of a vacancy on the board, submit no less than three names of three different eligible nominees for each position or vacancy to the governor, Senate, or House of Representatives, whichever is appropriate. A majority vote of the membership of the nominating committee shall be required to nominate persons to positions on the board.

(b) A vacancy on the board for any cause shall be filled in the same manner as the original appointment and from the same source for the remainder of the original term. If the nominating committee fails to submit nominees in the time required, the governor shall make the appointment or the Senate or the House of Representatives shall elect a person to the board.

(3)(a) Members of the board shall serve for staggered terms. Initial service shall be as provided in this Section. Thereafter, all terms shall be for five years.

(b) Initial terms shall be as follows:

(i) Three members shall be appointed for a three-year term by the governor.

(ii) Three members shall be appointed for a four-year term by the governor.

(iii) One member shall be appointed for a five-year term by the governor.

(iv) Two members shall be elected for a five-year term by the Senate.

(v) Two members shall be elected for a five-year term by the House of Representatives.

(c) No member may serve more than two consecutive terms.

(4)(a) No former board member may qualify as a candidate for any elected office within six months of the termination of his term on the board.

(b) No elected official or former elected official may serve as a member of the board within six months of the termination of his term.

(c) No public employee or former public employee shall serve as a member of the board within six months of the termination of his employment other than as a member of the board.

(d) No person shall be eligible for selection who has been registered as a lobbyist before the legislature within two calendar years of the date of appointment. Should any member serving on the board thereafter register as a lobbyist, he shall immediately resign his position on the board.

(e) No member of the board and no officer or employee of the board shall participate or engage in an effort to support or oppose the election of a candidate for political office or to support a particular party or issue in an election; be a member of any national, state, or local

committee of any political party or faction; make or solicit contributions for any political party, faction, candidate, or issue; or take active part in the management of the affairs of a political party, faction, candidate, or any political campaign, except to exercise his right as a citizen to express his opinion privately and to cast his vote as he desires.

(f) Notwithstanding any provision of law to the contrary, no member of the Board of Ethics shall serve at the same time on any other board or commission, the membership of which is appointed in whole or in part by the governor.

(g) No person shall be eligible for selection who is a party to any contract with any agency, entity, or political subdivision of the state.

(h) No person shall be eligible for nomination or selection if he or his spouse has contributed after January 1, 1996, more than one thousand dollars in the aggregate during the twelve months prior to his nomination or selection or more than five thousand dollars in the aggregate for a five-year period prior to his nomination or selection to any entity represented in the nominating committee.

C. Jurisdiction. The board shall administer and enforce the provisions of this Chapter and the rules, regulations, and orders issued hereunder with respect to public employees and elected officials. In addition, the board, functioning as the Supervisory Committee on Campaign Finance Disclosure, shall administer and enforce the provisions of Chapter 11 of Title 18 of the

Louisiana Revised Statutes of 1950, and the rules, regulations, and orders issued thereunder. In addition, the board shall administer the provisions of Part IV of Chapter 2 of Title 18 of the Louisiana Revised Statutes of 1950, relative to elections integrity.

D. Additional Jurisdiction. The board shall administer and enforce the provisions of R.S. 27:63, 96, 226, 261, and Part III of Chapter 1 of Title 24 of the Louisiana Revised Statutes of 1950, R.S. 27:316, and R.S. 47:9072.

*Acts 1979, No. 443, § 1, eff. April 1, 1980. Amended by Acts 1981, No. 59, § 2, eff. June 17, 1981; Acts 1989, No. 45, § 2; Acts 1989, No. 721, § 1, eff. July 8, 1989 until July 1, 1990; Acts 1991, No. 755, § 1, eff. Jan. 1, 1992; Acts 1993, No. 965, § 3, eff. August 15, 1993; Acts 1996, 1st Ex. Sess., No. 64, § 6, eff. Jan. 1, 1997.*

**§ 1133. Board of Ethics; quorum, recusal, compensation, officers**

A. Quorum. Six members shall constitute a quorum for transacting the business of the board.

B. Recusal. Any member of the board who has a personal interest in or who becomes the subject of an investigation or hearing by the board shall recuse himself from participation in such investigation or hearing.

C. Compensation. Members of the board shall receive fifty dollars per diem for each day devoted to the work of the board. They shall also receive reimbursement for vouchered traveling, lodging, and other expenses at the rate established for state employees.

D. Officers. The board shall elect a chairman from among its members to serve a two-year term. The board shall select other necessary officers from among its membership.

*Acts 1979, No. 443, § 1, eff. April 1, 1980; Acts 1989, No. 721, § 1, eff. July 8, 1989; Acts 1990, No. 1076, § 1, eff. July 31, 1990; Acts 1996, 1st Ex. Sess., No. 64, § 6, eff. Jan. 1, 1997.*

**§ 1134. Powers, duties, and responsibilities of the board**

A.(1) The board may adopt, amend, repeal, and enforce rules and regulations in the manner provided by the Administrative Procedure Act to carry out the provisions and purposes of this Chapter and any other law within its jurisdiction.

(2) The board shall provide for procedural rules governing the establishment and implementation of time periods for the dismissal of a complaint, the filing of a formal charge, the notification of the parties of the rendition of a decision, and the assessment of penalties.

B. The board shall select an executive secretary who shall perform the necessary administrative and other functions that the board may delegate. The executive secretary shall be a full-time public employee and shall not engage in any employment with any other agency of the state or with a political subdivision or agency thereof or enter into any contract or subcontract with any other agency of the state or with a political subdivision or agency thereof. All investigations, normal staff functions, and legal services shall be conducted by the staff of the

Department of State Civil Service, under the authority and direction of the board. The board may obtain investigative assistance from any agency.

C. The board may conduct private investigations in carrying out the board's responsibilities and powers under this Chapter and in obtaining information to serve as a basis for recommending additional legislation related to the purposes of this Chapter.

D. The board or a panel thereof may conduct private and public hearings in the discharge of the board's responsibilities.

E. The board may render advisory opinions with respect to the provisions of this Chapter and any other law within its jurisdiction and rules and regulations issued by the board. To facilitate this process, the board may provide by rule, for a consent agenda of proposed decisions on advisory opinions which shall be researched and prepared by the board's staff. Such rules shall provide for removing from the consent agenda any proposed advisory opinion which a member objects to considering on the consent agenda. Only those advisory opinions which are based on and consistent with prior opinions rendered by the board or its predecessors or prior decisions made by the board shall be placed on the consent agenda. The board may review and revise any opinion prepared by staff which has been or shall be placed on the consent agenda.

F. The board shall receive reports from agencies and collect information with respect to, and conduct studies of, personal conflicts of interest of public servants within its jurisdiction.

G. The board may consult with appropriate officials with respect to conflict of interest matters affecting more than one public agency.

H. The board may consult with agency heads and with appropriate officers designated by them as to the administration of this Chapter, within the board's jurisdiction, within their respective agencies and the regulations issued hereunder applicable to their respective agencies.

I. The board shall provide reports and information to the governor, the legislature, and to governing authorities concerning the administration of this Chapter within its jurisdiction and conflict of interest matters generally.

J. The board shall make recommendations to the governor and the legislature for revisions in the Code of Governmental Ethics and other legislation relating to the conduct of public servants and other persons subject to the provisions of this Chapter who are within its jurisdiction.

K. The board shall do and perform such other acts, duties, and functions as are provided elsewhere in this Chapter as it shall deem appropriate in connection with the provisions of this Chapter within its jurisdiction.

L. The board shall establish and implement a policy to provide information and material, in booklet form, by seminar, or by other means to any individual appointed to a public board or commission, that is not a state board or commission, which would inform them of the provisions of the Code of Governmental Ethics which are applicable to such appointed positions. The board may

adopt and charge a fee, in accordance with the Administrative Procedure Act, for any material or seminar provided pursuant to this Subsection.

M. The board shall establish a computerized data management system for the collection and dissemination of any material pursuant to the provisions of this Chapter and for the processing of any reports required to be filed with the board or pursuant to the provisions of this Chapter, Chapter 11 of Title 18 of the Louisiana Revised Statutes of 1950, or any other provision of law.

N. The board shall periodically conduct educational activities, seminars, and publish appropriate materials which provide instruction and information relative to the subjects of ethics and conflicts of interest concerning the following provisions: the Code of Governmental Ethics, the Campaign Finance Disclosure Act, the provisions in Part III of Chapter 1 of Title 24, relative to lobbying, the Louisiana Riverboat Economic Development and Gaming Control Act, the Louisiana Economic Development and Gaming Corporation Act, the Louisiana Lottery Corporation Law, the Video Draw Poker Devices Control Law, and any other matter within the board's jurisdiction or as provided in this Chapter. Such activities, seminars, and materials shall explain the law in plain language and shall be open or available to public servants in all state and local agencies and persons who do business with such agencies.

*Acts 1979, No. 443, §1, eff. April 1, 1980. Amended by Acts 1981, No. 59, §2, eff. June 17, 1981; Acts 1993, No. 909, §1; Acts 1996, 1st Ex. Sess., No. 64, §§6, 10, eff. Jan. 1, 1997.*

### §1135. Enforcement of regulation, decision, or order of the board

Any valid regulation, decision, or order of the board shall be enforceable in any court of competent jurisdiction in this state by a mandamus or injunction suit brought for that purpose. The district court for the parish wherein the board is domiciled shall have authority to convert a valid final decision or order of the board into a court order, upon receipt from the board of a rule to show cause for that purpose.

*Acts 1979, No. 443, §1, eff. April 1, 1980; Acts 1987, No. 730, §1; Acts 1996, 1st Ex. Sess., No. 64, §6, eff. Jan. 1, 1997.*

## Subpart B. Procedure

### §1141. Procedure

A. Panels. (1) The board members shall sit en banc and in panels in such order and at such times as the board directs.

(2) The board shall authorize the hearing and determination of matters by separate panels, each consisting of not less than three members. Such panels shall sit at the times and places to hear matters assigned as the chairman directs. Such hearings shall be public except those provided for in Subsection C of this Section. Each panel shall be vested with specific subject matter jurisdiction. The board may determine by rule a procedure to rotate members among different subject matter panels to encourage the participation of each member of the board in, and the

knowledge of each member of the board of, matters concerning the different provisions of law under the jurisdiction of the board.

(3) Matters shall be heard and determined by the board or panel of not less than three members, unless a hearing before the board en banc is ordered by a majority of the members of the board. The presence of the three members of the panel shall be required to conduct the business of the panel.

(4) Notwithstanding any other provision of this Chapter, the presence of nine members shall be required to conduct the business of the board sitting en banc.

(5) The board shall promulgate procedural and jurisdictional rules relative to the establishment of the several panels. The rules shall specify procedures wherein the chairman may refer matters to the appropriate panel with proper subject matter jurisdiction.

(6) The board, by a majority vote of its membership, may review any opinion, decision, finding, or ruling of any panel.

B. Complaints. (1) The board shall consider any signed sworn complaint from any elector, hereinafter referred to as complainant, concerning a violation of this Chapter which is within its jurisdiction or the regulations or orders issued by the board, or may by a two-thirds majority vote of its membership, consider any matter which it has reason to believe may be a violation of this Chapter. Additionally, the board may consider any matter which it has reason to believe may be a violation of any other provision of law within its jurisdiction as provided

in this Subsection or as may be otherwise provided by law. A certified copy of the vote and explanation of the matter or a copy of the sworn complaint if one has been submitted to the board shall be sent by certified mail to the accused and the complainant within ten days after the vote occurs. The chairman of the board shall assign each such matter to the appropriate panel for investigation.

(2) A notice or report sent to the board by the legislative auditor or the inspector general may be treated by the board as a matter for consideration in accordance with the provisions of this Subsection.

(3) If an elected official has tested positive for the use of illegal drugs or if an elected official has refused to submit to a drug test required pursuant to R.S. 42:1116.1, the board shall treat such conduct as a matter for consideration in accordance with the provisions of this Subsection.

C. Investigation and hearing. (1) Upon receiving a sworn complaint or voting to consider a matter as provided in Subsection B, a private investigation shall be conducted to elicit evidence upon which the panel as provided in this Section shall determine whether to recommend to the board to conduct a public hearing or that a violation has not occurred. The defendant and the complainant shall be given written notification of the commencement of the investigation not less than ten days prior to the date set for the investigation. All determinations in this Subsection shall be by a majority vote of the panel. However, in cases where the panel consists of three members, all determinations of such a panel shall require a unanimous vote of the members of the panel.

(2) After the investigation has been completed, the board shall determine whether to conduct a public hearing to receive evidence and to determine whether any violation of any provision of law within its jurisdiction has occurred, and if a violation has occurred, to prescribe authorized penalties. If a violation has not occurred, the defendant and the complainant shall be notified within ten days of the ruling.

D. Location of hearings. The board or panel may conduct any hearing provided in this Section in the parish wherein the public servant or person alleged to have violated any provision of law within the jurisdiction of the board resides, or in the parish of the official domicile of any office or employment held by the defendant, or in the parish of domicile of the board.

E. Procedure. (1) Any public servant or other person who is to be the subject of a public or private hearing and the complainant shall be given written notification of the pending charges and of the time and place such hearing is to be held. Such notification shall not be less than sixty days prior to the date set for the hearing. Upon the request of a public servant or other person charged, the hearing may be held sooner.

(2)(a) For purposes of an investigation or a hearing, the board or panel may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records which the board deems relevant or material to the investigation or hearing. Such attendance of witnesses and the production of any such records may be required at any place designated by the board or panel at no cost to the

public servant or other person charged as permitted by the rules of the board.

(b) The board shall adopt rules providing for discovery consistent with Chapter 3 of Title III of Book II of the Code of Civil Procedure, to the extent and in the manner appropriate to its proceedings.

(3) In case of contumacy or refusal to obey a subpoena issued to any public servant or other person, any district court of this state within the jurisdiction of which the inquiry is carried on, or within which said public servant or other person is found, resides, or transacts business, upon application by the board shall have jurisdiction to issue to such public servant or other person an order requiring him to appear before the board or panel and to produce evidence, if so ordered, or to give testimony touching on the matter under consideration. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

(4)(a) If any public employee shall willfully refuse or fail to appear before the board or panel, or any court authorized to conduct any hearing or inquiry pertaining to the provisions of this Chapter, or having appeared shall refuse to testify or answer any question specifically, directly, and narrowly relating to the performance of his official duties on the ground that his testimony or answers would tend to incriminate him, or shall refuse to accept immunity from prosecution on account of any matter about which he may be asked to testify at any such hearing or inquiry, such action shall be grounds for dismissal or forfeiture of his office or position and if

dismissed, he shall not be eligible thereafter for employment by the governmental entity for a period of five years, unless such reemployment is authorized by a majority vote of the membership.

(b) If any elected official shall willfully refuse or fail to appear before the board or panel, or any court authorized to conduct any hearing or inquiry pertaining to the provisions of this Chapter or having appeared shall refuse to testify or answer any question specifically, directly, and narrowly relating to the performance of his official duties on the ground that his testimony or answers would tend to incriminate him, or shall refuse to accept immunity from prosecution on account of any matter about which he may be asked to testify at such hearing or inquiry, such action shall be grounds for the board to prescribe the penalties provided in R.S. 42:1153 against such elected official.

(5) No disciplinary action shall be taken against a public servant or other person by the board or panel unless it is determined by a majority vote of the membership of the board or panel that such public servant or other person has violated a provision of law within its jurisdiction at a public hearing conducted for that purpose. However, in cases where the panel consists of three members, all determinations of such a panel shall require a unanimous vote of the members of the panel.

(6) Any public servant or other person who is the subject of any hearing may have legal counsel, cross examine witnesses, call witnesses, and present evidence in his own behalf.

(7) Any public servant or other person who is the subject of any investigation shall be advised of his right to have an attorney present.

(8) Any witness may be accompanied by counsel at investigations or hearings, which counsel may advise the witness of his rights, subject to reasonable limitations to prevent obstruction of or interference with the orderly conduct of the investigation or hearing. His counsel may also submit proposed questions to be asked for his client.

(9) Any witness at any investigation or hearing, subject to rules and regulations promulgated by the board, shall be entitled to a copy of his testimony when the same becomes important and relevant in a criminal proceeding or subsequent investigation or hearing provided that the furnishing of such copy will not prejudice the public safety or security.

(10) In making any official determination of whether any provision of law within the jurisdiction of the board has been violated, the board or panel may only consider testimony given under oath and transcribed verbatim by a reporter.

(11)(a) If the public hearing of the board or panel fails to disclose any substantial evidence to support the charges, the board or panel shall make an official determination of its findings and thereupon close its file on the charges. The public servant or other person charged and the complainant shall be notified in writing within ten days of the board's or panel's rendition of a final decision. The public servant or other person charged may require the board or panel to make an official determination of the validity of the charges against him.

(b) Any public servant or other person who is aggrieved by any action taken by a panel may request a review of the panel's decision by the board. The board shall determine whether or not to review the panel's action within fourteen days of the request for review.

(12) The records of the board prepared or obtained in connection with investigations and private hearings conducted by the board, including all extracts of minutes and votes to take any manner under consideration in connection therewith, shall be deemed confidential and privileged, except that such records shall be available to each member of the board upon request. Except as provided in this Paragraph and in R.S. 42:1111(E)(2)(c), all records, including the results and conclusions reached in connection with any investigation or hearing, shall be public.

(13)(a) It shall be a misdemeanor, punishable by a fine of not more than two thousand dollars or imprisonment for not more than one year, or both, for any member of the board, its executive secretary, other employee, or any other person, to make public the testimony taken at a private investigation or private hearing of the board or to make any public statement or give out any information concerning a private investigation or private hearing of the board without the written request of the public servant or other person investigated.

(b) Upon receipt of a written request by the public servant or person charged, the board shall furnish the requestor with a certified copy of the entire proceedings of a private hearing, including a verbatim transcript of all testimony considered at such hearing, and make public

the findings of any private investigation or hearing in connection with the charges.

F. Exception. The provisions of R.S. 42:4.1 et seq. shall not apply to investigations and hearings conducted by the board.

*Acts 1979, No. 443, §1, eff. April 1, 1980. Amended by Acts 1980, No. 579, §1; Acts 1980, No. 580, §1; Acts 1987, No. 730, §1; Acts 1996, 1st Ex. Sess., No. 64, §6, eff. Jan. 1, 1997; Acts 1997, No. 1303, §1.*

**§1142. Appeals**

A. Whenever action is taken against any public servant or person by the board or panel or by an agency head by order of the board or panel, or whenever any public servant or person is aggrieved by any action taken by the board or panel, he may appeal therefrom to the Court of Appeal, First Circuit, if application to the board is made within thirty days after the decision of the board becomes final. Any preliminary, procedural, or intermediate action or ruling by the board or panel is subject to the supervisory jurisdiction of the appellate court as provided by Article V, Section 10 of the Constitution of Louisiana. The Court of Appeal, First Circuit, shall promulgate rules of procedure to be followed in taking and lodging such appeals.

B. In the event that any public employee suspended or dismissed by order of the board or panel, or any public employee suspended or dismissed by an appointing authority at order of the board or panel expressly for violation of any provision of law within the jurisdiction

of the board is ordered reinstated by court order upon appeal, the public employee shall be entitled to receive his back pay for the period of his suspension or improper dismissal less any earnings by him during the period from other sources, provided, however, that there shall be excluded from the mentioned deduction costs of court and reasonable attorney fees which shall be fixed by the court.

C. Notwithstanding the provisions of this Section, a public employee who has attained permanent status in the classified state or city service, as provided in Article X, Section 1 of the Constitution of Louisiana, may, whenever any disciplinary action is taken against him by the board or panel or by an appointing authority by order of the board or panel, appeal therefrom to the appropriate civil service commission, if application to the board is made within thirty days after the decision of the board or panel becomes final. Any decision of a civil service commission may be appealed to the Court of Appeal, First Circuit, either by the board or the public employee, upon application to the civil service commission within thirty days after the decision of such civil service commission becomes final.

D. Notwithstanding the provisions of this Section, any tenured public employee of a public institution of higher education in this state may, whenever any disciplinary action is taken against him by the board or panel or by the appointing authority by order of the board or panel, appeal therefrom to the appropriate higher education management board, if application to the board is made within thirty days after the decision of the board or panel becomes final. Such appeal shall be solely on the

record of the board or panel hearing and the board shall adopt rules and regulations to effectuate the preparation of such record. If appeal is timely filed, the appropriate higher education management board shall review the record and decision shall be rendered thereon within one hundred twenty days of the receipt of the record from the board. Any decision of a higher education management board may be appealed to the Court of Appeal, First Circuit, as provided in this Chapter, either by the board or by the tenured public employee, upon application to the appropriate higher education management board within thirty days after the decision of such higher education management board is rendered.

*Acts 1979, No. 443, §1, eff. April 1, 1980; Acts 1996, 1st Ex. Sess., No. 64, §6, eff. Jan. 1, 1997.*

### §1143. Procedure and rules of evidence

Except as otherwise provided in this Chapter, all proceedings conducted by the board or panel shall be subject to and in accordance with the Administrative Procedure Act.

*Acts 1979, No. 443, §1, eff. April 1, 1980; Acts 1996, 1st Ex. Sess., No. 64, §6, eff. Jan. 1, 1997.*

## Subpart C. Enforcement and Penalties

### §1151. Administrative enforcement

A. Enforcement as to current public employees. An agency head and any other public servant having the authority to appoint a person to a position of public service, regardless of whether or not such appointment

requires the approval of the Senate or any other body, employee, or person, shall take such action as may be ordered by the board or panel with respect to any public employee within his agency or any such appointee, upon a finding by the board or panel that such employee or appointee has violated any provision of law within the jurisdiction of the board or any order, rule, or regulation promulgated thereunder. Such action may include the imposition of the conditions described in Subsection B of this Section.

B. Enforcement as to former public servants and other persons. Upon a finding by the board or panel or a court of competent jurisdiction, that a former public servant or other person has violated any provision of law within the jurisdiction of the board or any order, rule, or regulation promulgated hereunder, the agency head or the board or panel shall bar or impose reasonable conditions upon:

(1) The appearance before such agency of such former public servant or other person.

(2) The conduct of, or negotiation or competition for, business with such agency by such former public servant or other person, for such period of time as may be necessary or appropriate to effectuate the purposes of this Chapter.

*Acts 1979, No. 443, §1, eff. April 1, 1980; Acts 1996, 1st Ex. Sess., No. 64, §6, eff. Jan. 1, 1997.*

**§1152. Rescission of action of a governmental entity**

A. Subject to the limitations hereinafter set forth, the board or panel may cancel or rescind any contract of or permit or license issued by a governmental entity without liability to the governmental entity when:

(1) The board or panel has found that a violation of law within the jurisdiction of the board has influenced the issuing of the permit or license or the making of such contract.

(2) The board or panel finds under all of the circumstances that the interests of the governmental entity so require; however, such rescission is to be limited so as to not adversely affect the interests of innocent third parties.

B. The finding referred to in Subsection A of this Section shall be made in accordance with the procedures set forth in R.S. 42:1141 and shall be subject to judicial review in accordance with the provisions of R.S. 42:1142, provided that the board or panel may suspend the contract, permit, or license of the governmental entity subject to the limitations in Paragraph A(2) of this Section pending the determination of the merits of the controversy.

*Acts 1979, No. 443, §1, eff. April 1, 1980; Acts 1988, No. 581, §1; Acts 1996, 1st Ex. Sess., No. 64, §6, eff. Jan. 1, 1997.*

**§1153. Penalties**

A. Upon finding that any elected official or other person has violated any provision of any law within the jurisdiction of the board except violations of the Campaign Finance Disclosure Act which shall be governed by

Chapter 11 of Title 18 of the Louisiana Revised Statutes of 1950, the board by a majority vote of the membership, may censure the elected official or person, or impose a fine of not more than ten thousand dollars, or both.

B. Upon finding that any public employee or other person has violated any provision of any law within the jurisdiction of the board except violations of the Campaign Finance Disclosure Act which shall be governed by Chapter 11 of Title 18 of the Louisiana Revised Statutes of 1950, the board by a majority vote of the membership, may remove, suspend, or order a reduction in pay, or demotion of the public employee or other person, or impose a fine of not more than ten thousand dollars, or both.

*Acts 1979, No. 443, §1, eff. April 1, 1980; Acts 1996, 1st Ex. Sess., No. 64, §6, eff. Jan. 1, 1997; Acts 1996, 1st Ex. Sess., No. 66, §3, eff. Jan. 1, 1997.*

**§1154. Civil penalties for illegal payments**

When the results of a board investigation pursuant to R.S. 42:1141 indicates that a violation of R.S. 42:1117 has occurred, the board may order the payment of a penalty by any person who violates R.S. 42:1117. The penalty shall be limited to an amount not in excess of ten thousand dollars. Any appeal of such order by the board shall be to the Court of Appeal, First Circuit, pursuant to R.S. 42:1142.

*Acts 1979, No. 443, §1, eff. April 1, 1980; Acts 1996, 1st Ex. Sess., No. 66, §§3, 5, eff. Jan. 1, 1997.*

**§1155. Penalties for illegal gain; forfeiture of gifts, payments**

A. If an investigation pursuant to R.S. 42:1141 reveals that any public servant or other person has violated any law within the jurisdiction of the board to his economic advantage, the board may order the payment of penalties. Recovery may include, in addition to an amount equal to such economic advantage, penalties not to exceed one half of the amount of the economic advantage. Any appeal of such order shall be to the Court of Appeal, First Circuit, pursuant to R.S. 42:1142.

B. The board is authorized to order the forfeiture of any gifts or payments made in violation of this Chapter.

*Acts 1979, No. 443, §1, eff. April 1, 1980; Acts 1996, 1st Ex. Sess., No. 64, §6, eff. Jan. 1, 1997; Acts 1996, 1st Ex. Sess., No. 66, §3, eff. Jan. 1, 1997.*

**§1156. Finding of possible criminal violation**

Upon finding at a public hearing that there is probable cause to believe that any public servant or other person has violated any criminal law of this state, the board or panel shall forward a copy of its findings to the district attorney of the parish in which the violation occurred, for appropriate action. Thereafter, notwithstanding any other provision of this Chapter, such district attorney shall have access to all records of the board relative to such charges.

*Acts 1979, No. 443, §1, eff. April 1, 1980; Acts 1996, 1st Ex. Sess., No. 64, §6, eff. Jan. 1, 1997.*

**§1157. Late filing fees**

A.(1) The staff of the board shall automatically assess and order the payment of late filing fees for any failure to timely file any report or statement due under any law under its jurisdiction as provided in R.S. 42:1131(C) or 1132(C) or R.S. 24:50 et seq. The board shall promulgate rules to facilitate the carrying out of the provisions of this Chapter regarding order for and payment of late fees. Any appeal of such order for the payment of late fees shall be to the board, which shall promulgate rules governing the procedure for appeals of late filing fees.

(2) The late filing fees for election campaign finance reports shall be as provided in R.S. 18:1505.4.

(3) The late filing fees for any lobbyist required to register and file reports under the provisions of R.S. 24:50 et seq., shall be as provided in R.S. 24:58(D).

(4) The late filing fees for any violation of R.S. 42:1114 and 1124 shall be as provided in R.S. 42:1124(C).

B. The staff of the board shall mail by certified mail a notice of delinquency within two days after the due date for any report or statement due under the laws within its jurisdiction which has not been timely filed.

C. All funds collected by the staff of the board as provided in Subsection A of this Section shall be deposited upon receipt in the state treasury.

*Acts 1996, 1st Ex. Sess., No. 66, §§3, 5, eff. Jan. 1, 1997.*

**§1157.1. Timely filing of reports and statements due; presumption**

The filing of reports and statements shall be deemed timely in either of the following cases:

(1) The papers are mailed on or before the due date. If the papers are received by mail on the first day following the due date, there shall be a rebuttable presumption that they were timely filed. In all cases where the presumption does not apply, the timeliness of the mailing shall be shown only by an official U.S. postmark or by official receipt or certificate from the U.S. Postal Service made at the time of mailing which indicates the date thereof. For purposes of this Section, "by mail" applies only to the U.S. Postal Service.

(2) The report or statement due is transmitted by facsimile transmission or electronic transfer and received by the board on or before the due date. Any report or statement transmitted by facsimile transmission or electronic transfer and received by the board shall be considered as if filed in the original. However, in the case where the staff of the board discovers that a facsimile transmission or electronic transfer is illegible upon receipt, the staff shall immediately give notice to the party whose report or other statement is illegible that a legible copy of such facsimile transmission or electronic transfer shall be mailed or hand delivered within twenty four hours to the offices of the board. The filing date shall be deemed to be the date of receipt of the facsimile transmission or electronic transfer of the report or statement.

*Acts 1996, 1st Ex. Sess., No. 66, §§3, 5, eff. Jan. 1, 1997.*

### §1157.2. Waiver of late filing fee; rules; good cause

The board shall promulgate rules to provide for waiver of late filing fees for "good cause" shown. "Good cause" shall be defined for purposes of this Section as any actions or circumstances which, in the considered judgment of the board, were not within the control of the late filer and which were the direct cause of the late filing or any provision specified in R.S. 18:1511.5(B).

*Acts 1996, 1st Ex. Sess., No. 66, §§3, 5, eff. Jan. 1, 1997.*

## Subpart D. Computer Data Management System

### §1158. Board of Ethics Computerized Data Management System; purpose; goals

A.(1) To enhance the board's ability to govern and enforce the Code of Governmental Ethics and to provide efficient and economical dissemination of information, the board shall establish the Board of Ethics Computerized Data Management System.

(2) The following basic specifications shall be designed into the board's computerized data management system:

(a) The system shall be capable of handling each type of report required to be filed with the board.

(b) The system shall permit electronic filing of all reports required to be filed with the board or as provided for by this Chapter.

(c) The system shall provide for in-house review of all reports filed with the board.

(d) The system's data base shall be categorized to provide for citizen's access of all reports filed with the board.

B. The computerized data system shall be used to aid in the distribution of materials to state and local agencies as provided in R.S. 42:1170.

C. Notwithstanding any contrary provision of this Section, any material or information which is confidential as provided by law shall be excluded from such public access.

D. The Board of Ethics Computerized Data Management System shall commence basic operations no later than May 1, 1997, with total implementation of the system as provided for in this Subpart by May 1, 1998.

*Acts 1996, 1st Ex. Sess., No. 64, §6, eff. Jan. 1, 1997.*

## Part IV. Miscellaneous Provisions

### §1161. Preventive measures by agency heads

A. Filing of reports. Every agency head shall file confidential reports with the board or panel on any matters that come to his attention which he believes may constitute a violation of this Chapter which is within the board or panel's jurisdiction.

B. Cooperation with board. Every agency head shall cooperate in every possible manner in connection with any investigation or hearing which may be lawfully conducted by the board or panel.

C. Compliance with order of board or panel. Every agency head shall forthwith comply with any lawful

order received from the board or panel and shall immediately take disciplinary action against any employee under his supervision when ordered to do so by the board or panel.

D. Failure to comply with order of board or panel. Failure on the part of any agency head who is not an elected official to comply promptly with any lawful order received from the board or panel shall subject him to all penalties provided for elsewhere in this Chapter and shall cause the immediate suspension of all salary and other benefits which he otherwise would be entitled to receive. Such suspension shall remain in effect during the period in which he fails or refuses to comply, and all public employees are hereby directed to refuse to honor any drafts or other documents which would violate this provision.

E. Agency employment lists. Every agency head shall furnish the board or panel, upon request, a list showing the names, positions, compensation, if any, and the time actually spent earning such compensation of all agency employees. The list shall be prepared at the expense of the agency furnishing it out of funds available to such agency.

F. Screening of employees. Every agency head shall constantly screen all employees under his supervision to ascertain that such employees are needed to perform the work of the agency and shall promptly take the necessary steps to reduce the number of the employees of the agency to a sufficient or satisfactory number required. Knowingly having one or more employees on the payroll who are not rendering service for which they are being

paid or having one or more employees on the payroll that violate the provisions of R.S. 42:1119 shall subject the agency head, a public employee having the authority to hire and fire the employee, and the immediate supervisor of the employee, as well as such employee, to the disciplinary action and penalties provided by this Chapter.

*Acts 1979, No. 443, §1, eff. April 1, 1980; Acts 1996, 1st Ex. Sess., No. 64, §§6, 11, eff. Jan. 1, 1997.*

**§1162. Copy of ethics code to be furnished by the secretary of state**

Whenever the secretary of state shall issue a commission to a public servant, he shall include therewith a copy of this Chapter in pamphlet or other form convenient to the secretary, and the public servant shall acknowledge receipt thereof when filing his oath of office with the secretary of state.

*Acts 1979, No. 443, §1, eff. April 1, 1980.*

**§1163. Prescription**

No action to enforce any provision of this Chapter shall be commenced after the expiration of two years following the discovery of the occurrence of the alleged violation, or four years after the occurrence of the alleged violation, whichever period is shorter.

*Acts 1979, No. 443, §1, eff. April 1, 1980.*

**§1164. Criminal laws not affected**

Nothing in this Chapter is intended to nor is to be construed as repealing, amending, or modifying in any way any provision of any criminal law of this state.

*Acts 1979, No. 443, §1, eff. April 1, 1980.*

**§1165. Authority of school boards to administer tenure laws not affected**

A. Nothing in this Chapter is intended nor shall it be construed to have the effect of repealing, amending, or modifying in any way any state tenure statutes pertaining to the rights of probationary or permanent teachers or other public employees of any parish or city school board of this state nor the authority of any such school board to administer the state tenure statutes, relative to teachers and other public employees of the school board, when such teachers and other public employees are serving in their official capacities. All job actions based upon the causes for disciplining or dismissal of teachers or other school public employees, as may be now or hereafter set forth in the state tenure statutes, shall remain under the exclusive jurisdiction of the appropriate parish or city school board.

B. Subject to the provisions of Subsection A, the board or panel may order that any public employee of a parish or city school board of this state be disciplined or dismissed as provided in this Chapter whenever the board or panel has determined that the public employee has violated any provision of law within the jurisdiction of the board.

*Acts 1979, No. 443, §1, eff. April 1, 1980; Acts 1996, 1st Ex. Sess., No. 64, §6, eff. Jan. 1, 1997.*

**§1166. Violation of code by tenured public employee of a state public higher education institution**

Any final determination that a tenured public employee of a public higher education institution in this state has violated any provision of law within the jurisdiction of the board, except as otherwise exempted therefrom, may be grounds for disciplining or dismissing the tenured public employee by the appropriate higher education management board, or by the appointing authority by order of the board or panel in accordance with applicable tenure law, rule, or policy.

*Acts 1979, No. 443, §1, eff. April 1, 1980; Acts 1996, 1st Ex. Sess., No. 64, §6, eff. Jan. 1, 1997.*

**§1167. Judges**

All judges, as defined by the Code of Judicial Conduct, shall be governed exclusively by the provisions of the Code of Judicial Conduct, which shall be administered by the Judiciary Commission provided for in Article V, Section 25 of the Constitution of Louisiana.

*Acts 1979, No. 443, §1, eff. April 1, 1980.*

**§1168. Perjury; malfeasance in office**

A. Perjury. Any person who intentionally and knowingly either files a false sworn complaint with the board or who gives false sworn testimony before the

board or panel shall, upon conviction by a court of competent jurisdiction, be guilty of the crime of perjury and subject to the penalty set forth in R.S. 14:123.

B. Malfeasance by member of the board. Any member of the board who knowingly and intentionally initiates action by the board or panel against any public servant, or person knowing such action to be false shall, upon conviction by a court of competent jurisdiction, be guilty of the crime of malfeasance in office and subject to the penalty set forth in R.S. 14:134.

*Acts 1979, No. 443, §1, eff. April 1, 1980; Acts 1996, 1st Ex. Sess., No. 64, §6, eff. Jan. 1, 1997.*

### §1169. Freedom from reprisal for disclosure of improper acts

A. Any public employee who reports to his agency head or the board information which he reasonably believes is a violation of any provision of law within the jurisdiction of the board or of any order, rule, or regulation issued hereunder or any other alleged acts of impropriety within any governmental entity shall be free from discipline or reprisal for reporting said acts of alleged impropriety. No employee with authority to hire and fire, supervisor, agency head, or other elected official shall subject to reprisal any public employee because of said employee's efforts to disclose such acts of alleged impropriety.

B. Any public employee in state government who reports to a person or entity of competent authority or jurisdiction information which he reasonably believes is a

violation of any law or of any order, rule, or regulation issued in accordance with law or any other alleged acts of impropriety related to the scope and/or duties of public employment or public office within any branch of state government shall be free from discipline or reprisal for reporting said acts of alleged impropriety. No employee with authority to hire and fire, supervisor, agency head, or other elected official shall subject to reprisal any such public employee because of said employee's efforts to disclose such acts of alleged impropriety.

C.(1) In the event that any public employee is suspended, demoted, or dismissed in violation of this Section as an act of reprisal for reporting an alleged act of impropriety, such employee shall report such action to the board.

(2) An employee who is wrongfully suspended, demoted, or dismissed shall be entitled to reinstatement of his employment and entitled to receive any lost income and benefits for the period of any suspension, demotion, or dismissal.

D. Any person who violates this Section shall be subject to the same fines and penalties provided for other violations of this Chapter.

*Acts 1979, No. 443, §1, eff. April 1, 1980; Acts 1995, No. 1115, §1; Acts 1996, 1st Ex. Sess., No. 64, §6, eff. Jan. 1, 1997.*

**§1170. Ethics education**

A. Each state agency shall designate at least one person who shall, with the assistance of the board, provide all public servants of that agency information relative to ethics and conflicts of interest concerning the following provisions: the Code of Governmental Ethics, the Campaign Finance Disclosure Act, the provisions of Part III of Chapter 1 of Title 24, relative to lobbying, the Louisiana Riverboat Economic Development and Gaming Control Act, the Louisiana Economic Development and Gaming Corporation Act, the Louisiana Lottery Corporation Law, and the Video Draw Poker Devices Control Law. The agency shall also provide instruction and information to such public servants intended to educate them about the particular ethics laws to which they are subject and the procedures by which such laws are enforced.

B. All agencies shall provide information about governmental ethics to those with whom they do business.

*Acts 1996, 1st Ex. Sess., No. 64, §6, eff. Jan. 1, 1997.*

Supreme Court, U.S.
JUN 1 2000
OFFICE OF THE CLERK

No. 99-1552

In The

# Supreme Court of the United States

STATE OF LOUISIANA, THROUGH THE HONORABLE MIKE J. FOSTER, JR. GOVERNOR; THE LOUISIANA STATE BOARD OF ETHICS, AND ITS MEMBERS; ROBERT ROLAND, HARRY BLUMEHTHAL, JR., ROBERT BARTEIKIS, Dr. E.L. GUIDRY, VIRGIL ORR, Dr. REVIUS ORTIQUE, JR., T.O. PERRY, JR., ROBERT L SAWYER, NATHAN J. THORNTON, JR., EDWIN O. WARE III, CAROLE COTTON WINN; DAVID W. HOOD, SECRETARY OF THE LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS; AND MARK C. DRENNEN, COMMISSIONER OF ADMINISTRATION,

*Petitioners,*

versus

PHILLIP E. O'NEILL, AVERY C. ALEXANDER, AND ARTHUR A. MORRELL,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeal For The Fifth Circuit**

## RESPONDENT'S BRIEF IN OPPOSITION

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## WHERE'S THE SPECIAL NEED?

## SUMMARY OF ARGUMENT

Searches and seizures

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. Const. Amend IV. (Applicable to the States through the Fourteenth Amendment – *Ker v. California*, 374 U.S. 23, 83 S.Ct. 1623 (1996) at page 1628.

> "Because it is clear that the collection and testing of urine intrudes upon expectations of privacy that society has long recognized as reasonable, the Federal Courts of Appeals have concluded unanimously, and we agree, that these intrusions must be deemed searches under the Fourth Amendment. (FN4)." *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602 at 617, 109 S.Ct. 1402 (1989) at 1413.

Louisiana's scheme for the random testing of all of its elected officials' urine, for illegal drugs, as set out in LSA-R.S. 42:1116.1 (La. Act 1303 of 1997)[1] and Chapter 17 of the Rules for the Louisiana Board of Ethics involving the drug testing of elected officials[2] is void of any meaningful distinction from the premises and facts set out in *Chandler v. Miller*, 520 U.S. 305, 117 S.Ct. 1295, 137 L.Ed.2d

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[1] See Petitioners' Appendix, Pages 250-253.

[2] See Petitioners' Appendix, Pages 39-53.

513 (1997) and is outside the parameters of *National Treasury Employee Union v. Von Raab*, 489 U.S. 656, 109 S.Ct. 1384 (1989), *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 109 S.Ct. 1402, 103 L.Ed.2d 639 (1989), or *Veronia School Dist. 473 v. Acton*, 515 U.S. 646, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995) and is within the parameters of *Chandler v. Miller*, 520 U.S. 305, 117 S.Ct. 1295 (1997) and therefore such scheme violates the Fourth Amendment of the Constitution of the United States of America, applicable to the States through the Fourteenth Amendment, by allowing a prohibited seizure and search, under the Fourth Amendment; therefore, said statute is unconstitutional on its face and is unenforceable against any elected official in the State of Louisiana.

> "Our precedents establish that the proffered special need for drug testing must be substantial – important enough to override the individual's acknowledged privacy interest, sufficiently vital to suppress the Fourth Amendment's normal requirement of individualized suspicion. . . . Georgia has failed to show, in justification of § 21-2-140, a special need of that kind." *Chandler v. Miller*, 520 U.S. 305, 117 S.Ct. 1295 (1997) at 1303.

## ARGUMENT

Like Georgia, in *Chandler v. Miller, supra*, Louisiana fails to show any such need that would justify the drug testing scheme created by LSA-R.S. 42:1116.1 wherein it specifically sets out "that all elected officials demonstrate that they do not use illegal drugs, without the necessity

of showing any measure of individualized suspicion."[3] Petitioners' brief admits as much, " . . . there has been no showing of a history of drug abuse by Louisiana's elected officials,. . . . "[4]

Petitioners, at all times, have ignored the first prong of *Chandler, supra,* namely "the lack of need"; talking only about the convenient invasions of privacy with its methods of seizing and searching the urine, as if this so-called "convenience" excuses the violation of the Fourth Amendment. No intrusion of Fourth Amendment protections is "convenient", some are simply less intrusive than others:

> "But where, as in this case, public safety is not genuinely in jeopardy, the Fourth Amendment precludes the suspicionless search, no matter how conveniently arranged." *Chandler v. Miller,* 520 U.S. 305, 117 S.Ct. 1295 (1997) at 1305.

There is nothing, absolutely nothing, that an elected official can do or accomplish, as an elected official, to reach a point of no return, relating to public endangerment or safety, that the normal law enforcement of the injunctive process of the civil law cannot prevent; *as was done in this case.* Normal police surveillance, tactics and enforcement of the criminal laws of the States and Nation can handle any crime committed by an elected official,

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[3] See Petitioners' Appendix, pages 250-251: LSA-R.S. 42:1116.1A reads in part " . . . demonstrate that they do not use illegal drugs, without the necessity of showing any measure of individualized suspicion".

[4] See page 11, petitioner's brief.

even in his official capacity, without sacrificing the protections of the Fourth Amendment.

Finding as a matter of fact that the State of Louisiana acknowledges that no history of drug abuse exists among its elected officials and that other considerations in conjunction with this one are fatal to section 1116.1, Honorable Eldon E. Fallon, U.S. District Judge, with a complete understanding of the premises, predicates and mandates cited in *Chandler v. Miller, supra,* concluded that LSA-R.S. 42:1116.1 must be declared in violation of the Fourth Amendment and therefore unconstitutional, to-wit:

> "The defendants place great emphasis on the distinction between elected officials and candidates in their attempt to distinguish this dispute from *Chandler*. The tone of the majority opinion in that case, however, indicates that the *Chandler* Court saw little difference between the two groups. The majority explicitly referred to elected officials rather than candidates when it found that the statute's target group performed no safety sensitive tasks establishing the requisite special needs. Moreover, it is clear from the *Chandler* opinion that the only reason Georgia was interested in testing candidates was due to the prospect that they might later become elected officials. Absent this possibility, there was absolutely no reason to pass such a statute in the first instance. Furthermore, if it is improper to drug test a candidate for elected office, it seems incongruous to hold that once an individual is actually in office that person is somehow more susceptible to the very same search.

> Because this Court finds no meaningful distinction between candidates for public office and those who have ascended to such office following an election, the principles of Chandler squarely control the outcome of this case." *O'Neill, et al v. State of Louisiana, et al*, 61 F.Supp. 2nd 485 (USDC E.D. LA, 11/24/98, the Honorable Eldon E. Fallon, U.S. District Judge, Presiding) at page 496.

In spite of Justice Ginsburg's notice of and rejection of Georgia's defense of their statute, to-wit:

> "Respondents' defense of the statute rests primarily on the incompatibility of unlawful drug use with holding high state office. The statute is justified, respondents contend, because the use of illegal drugs draws into question an official's judgment and integrity; jeopardizes the discharge of public functions, including antidrug law enforcement efforts; and undermines public confidence and trust in elected officials. Brief for Respondents 11-18. The statute, according to respondents, serves to deter unlawful drug users from becoming candidates and thus stops them from attaining high state office. Id., at 17-18. *Notably lacking in respondents' presentation is any indication of a concrete danger demanding departure from the Fourth Amendment's main rule." Chandler v. Miller, supra,* at 117 S.Ct. 1303.

Louisiana insists on using the same defense of LSA-R.S. 42:1116.1 that failed in *Chandler, supra.* This defense has no merit, whatsoever.

The Fourth Amendment is not a symbol and no symbolic rhetoric creating a symbolic need can destroy the protections of the Fourth Amendment:

"The need revealed, in short, is symbolic, not 'special,' as that term draws meaning from our case law." *Chandler v. Miller, supra,* 117 S.Ct. at 1305.

AND

"However well-meant, the candidate drug test Georgia has devised diminishes personal privacy for a symbol's sake. The Fourth Amendment shields society against that state action." *Chandler v. Miller, supra,* 117 S.Ct. at 1307.

AS WELL AS

"Indeed, if a need of the "set a good example" genre were sufficient to overwhelm a Fourth Amendment objection, then the care this Court took to explain why the needs in Skinner, Von Raab, and Vernonia ranked as "special" wasted many words in entirely unnecessary, perhaps even misleading, elaborations." *Chandler v. Miller, supra,* 117 S.Ct. at 1305.

WRAPPING IT UP & TYING IT DOWN

". . . . We reverse that judgment. Georgia's requirement that elected officials pass a drug test does not fit within the closely guarded category of constitutionally permissible suspicionless searches." *Chandler v. Miller, supra,* 117 S.Ct. at 1298.

Change "Georgia" to "Louisiana" and the foregoing, alone, denies the Petitioners' Application For Writ Of Certiorari.

The Honorable Rosemary Barkett, Circuit Judge, U.S. Court Of Appeals For The Eleventh Circuit, in her dissent in *Chandler v. Miller,* 73 F.3d 1543 (C.A. 11, 1996) at page 1549-50 put everything in perspective, to-wit:

> "As the majority recognizes, there is no question that the mandatory drug testing in this case is an unreasonable search prohibited by the Fourth Amendment *unless* it is required by 'special governmental needs beyond the normal need for law enforcement,' and those needs outweigh the candidates' privacy interests. *National Treasury Employees v. Von Raab*, 489 U.S. 656, 665-66, 109 S.Ct. 1384, 1390-91, 103 L.Ed.2d 685 (1989) (citing *Skinner v. Railway Labor Executives' Assn*, 489 U.S. 602, 109 S.Ct. 1402, 1413-14 (1989)). I dissent because I do not believe that the suspicionless search in these circumstances serves any special governmental need beyond the normal need for law enforcement, and, if it did, I believe that the candidates' privacy interests outweigh the governmental interests when the factors of *Von Raab* are properly considered.
>
> Before balancing the candidates' privacy expectations against the government's interests in conducting suspicionless drug screening, the court must first ascertain whether this case presents a special governmental need beyond the normal need for law enforcement. (FN1) In simpler terms, before the court can balance the competing interests in this case, it must first ask what is so impractical about requiring a warrant or individualized suspicion in the circumstances presented here. It is in this threshold inquiry that I believe the majority first errs."

Thank you, Judge Barkett, for making a fine contribution to the Crown Jewels of our freedoms; the First and Fourth Amendment. The compliment of Justice Ginsburg noticing your dissent in *Chandler v. Miller*, 520 U.S. 305, 117 S.Ct. 1295 at 1300 is very well deserved.

Like Georgia, in *Chandler,* Louisiana says that the suspicionless tests signify that elected officials will be free to serve their constituents free from the influence of illegal drugs, but asserts no evidence of a drug problem among said elected officials. In responding to this premise Justice Ginsburg, speaking for the court, declared:

> " . . . those officials typically do not perform high-risk, safety sensitive tasks, and the required certification immediately aids no interdiction effort." *Chandler,* 117 S.Ct. at 1305.

Louisiana says it is joining the drug war;[5] that's not a reason to deprive free people of their Fourth Amendment Protections:

> "To me the argument set up by the other side seems a delusion simply. In a time of war, more than at any other time, Public Liberty is in the hands of the public officers. And she is there in double trust; first, as they are citizens, and therefore bound to defend her, by the common obligation of all citizens; and next, as they are her special guardians. The opposing argument, when turned into its true sense, means this, and this only: that when the Constitution is attacked upon one side, its official guardians may assail it upon the other; when rebellion strikes it in the face, they may take advantage of the blindness produced by the blow, to stab it in the back." *Ex Parte Milligan,* 71 U.S. 2 (U.S. [hid.]. 1866) – Excerpt from 71 U.S. at page 79. (Attorney J.C. Black argument).

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[5] See Petitioners' Brief, page 11.

And, so it goes in the so-called "Drug War" that our elected leaders have declared. While the people are blinded by all the rhetoric concerning such pseudo war, those same elected leaders sneak up on the Fourth Amendment and stab it in the back.

Fortunately, for Free People, like in *Ex parte Milligan*, supra, our courts guard the Amendments (BILL OF RIGHTS), like the jewels of liberty they are, and prevent such stabbing from becoming fatal.

Any attempt by Louisiana, like Georgia in *Chandler*, to use as support for its position *Vernonia School Dist. 47J v. Acton*, 515 U. S. 646, 115 S.Ct. 2386, 2389, 2396-2397, 132 L.Ed.2d 564 (1995) (random drug testing of students who participate in interscholastic sports); *National Treasury Employee Union v. Von Raab*, 489 U.S., at 659, 109 S. Ct. at 1387 (drug tests for United States Customs Service employees who seek transfer or promotion to certain positions); *Skinner v. Railway Labor Executives' Assn.*, 489 U.S, 602, 608-613, 109 S.Ct. 1402, 1408-1411, 103 L.Ed.2d 639 (1989) (drug, and alcohol tests for railway employees involved in train accidents and for those who violate particular safety rules), is misplaced and not appropriate in the face of *Chandler*.

The United States Court Of Appeals for the Fifth Circuit affirmed the United States District for the Eastern District of Louisiana's decision declaring the Louisiana Scheme of Drug Testing its elected officials unconstitutional, with the following compliment to the Honorable Eldon E. Fallon, District Judge:

"This is an appeal from the decision of the district court holding that Louisiana Revised Statute 42:1116.1, which provides for random drug testing of elected officials holding state office in Louisiana, is violative *1170 of the Fourth Amendment of the United States Constitution. We have reviewed the record on appeal and the appellate briefs of counsel, and have heard arguments of able counsel discussing the relevant facts from the record and the applicable law as related in briefs and those arguments. In the end we are satisfied that the district court committed no reversible error in applying the pertinent law to the virtually uncontested facts and that *all rulings of the district court should be affirmed for essentially the reasons set forth in the complete and well-crafted opinion of that court.* [FN1]" (Emphasis added.)

FN 1. See O'Neill, et al. v. State of Louisiana, et al., 61 F.Supp.2d 485 (USDC E.D. La. 1998). O'Neill v. State of Louisiana, 197 F.3d 1169 (C.A. 5, 1999).[6]

## CONCLUSION

No special need exists in this matter.

Louisiana's attempt to distinguish this matter from *Chandler* is like separating the SUN from SUNSHINE, it can not be done.

LSA-R.S. 42:1116 is unconstitutional because under *Chandler* there is no special need to drug test elected

[6] See Petitioners' Appendix, pages 1-3.

officials. As the courts below held in this case, there is no significant distinction between LSA-42:1116 and the statute held unconstitutional in *Chandler.* There is no reason for reversing *Chandler v. Miller,* 520 U.S. 305, 117 S.Ct. 1295 (1997), or the courts below.

The Petitioners' Application For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit should be denied.

Respectfully Submitted,

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